Summer 1987

Minimum Contacts: Only One Part of the Personal Jurisdiction Analysis

Jeffrey J. Simon

Follow this and additional works at: https://scholarship.law.missouri.edu/mlr

Part of the Law Commons

Recommended Citation
Jeffrey J. Simon, Minimum Contacts: Only One Part of the Personal Jurisdiction Analysis, 52 Mo. L. Rev. (1987)
Available at: https://scholarship.law.missouri.edu/mlr/vol52/iss3/9

This Note is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.
MINIMUM CONTACTS: ONLY ONE PART OF THE PERSONAL JURISDICTION ANALYSIS

State ex rel. Honda Research and Development Co., Ltd. v. Adolf

Tens of thousands of Americans will be injured this year, some of them fatally, as a result of all terrain vehicle accidents. While human factors such as drunken riding and inexperience cause some percentage of the injuries, the Consumer Product Safety Commission (CPSC) believes that the ATV's design is responsible for most accidents. Honda Ltd., which manufactures an ATV marketed as the ATC, contends that rider misuse is to blame for the accidents, and that the basic design is safe. In State ex rel. Honda Research and Development Co., Ltd. v. Adolf, (hereinafter Honda R&D) a Missouri appellate court held that Missouri does not have personal jurisdiction over the Japanese corporation which designed the Honda ATC. The court determined that the "minimum contacts" necessary to sustain jurisdiction did not exist. The court addressed only the minimum contacts issue,

1. 718 S.W.2d 550 (Mo. Ct. App. 1986).
2. Based on hospital emergency room reports, ATC related injuries in the United States numbered 66,956 in 1984. At least 161 people died between January 1982 and April 1985 from ATV accidents. The injuries for 1984 are almost two-and-one-half times greater than those for 1983, and seven times greater than 1982. ATVs account for twice as many injuries as mini-bikes/trail bikes, and eight times as many as snowmobiles. The Consumer Product Safety Commission (CPSC) estimated that 2.5 million ATVs were available for use at the end of 1985, and that the number would increase. See CPSC, All-Terrain Vehicles; Advanced Notice of Proposed Rulemaking; Request for Comments and Data, 50 Fed. Reg. 23,139 (1985) (to be codified at 16 C.F.R. ch. II).
3. "[T]he Commission staff is presently of the opinion that the performance characteristics of the ATVs comprise the single most prominent factor identifiable as a cause of loss of control." Id. at 23,141.
5. 718 S.W.2d 550 (Mo. Ct. App. 1986).
6. The court does not discuss whether this cause of action is covered by the Missouri long-arm statute, Mo. Rev. Stat. § 506.500 (1986). A prerequisite to the due process analysis is determining whether the act in question is covered by the long-arm statute. If it falls within the purview of the long-arm statute, the court commences with the jurisdictional analysis. See Comment, In Personam Jurisdiction Over Non-resident Manufacturers in Product Liability Actions, 63 Mich. L. Rev.
and thus did not complete the jurisdictional analysis prescribed in *Burger King v. Rudzewicz*. This failure to apply the proper test accounts for an unfair result and a precedent which encourages foreign manufacturers to align their corporate structure so as to insulate design materials from discovery attempts by American plaintiffs. This Note will conduct an analysis independent from the court of appeals, following instead the *Burger King* approach.

The due process clause of the fourteenth amendment prohibits a court from asserting jurisdiction over a defendant outside the forum unless that defendant has sufficient "minimum contacts" with the forum so as to provide "fair warning" to him that he is amenable to suit in the forum. Due process requires only that assertion of jurisdiction be "reasonable" and "fair." In *Honda R&D* the Missouri Court of Appeals for the Eastern District concluded that, although Honda Research and Development Co. (hereinafter Honda R&D) designed the ATC specifically for the American market, due process prohibited compelling that corporation to defend a personal injury suit in Missouri arising from the ATC's presence in the state. This decision fails to serve the purpose and policies underlying the United States Supreme Court's personal jurisdiction analysis as articulated in *International Shoe Company v. Washington* and its progeny.

1028 (1965).

Missouri courts, however, have interpreted the reach of the long-arm statute to be "co-extensive with that of due process." Medicine Shoppe Int'l v. J-Pral Corp., 662 S.W.2d 263, 271 (Mo. Ct. App. 1983). The Missouri "single-act tort" statute, Mo. REV. STAT. § 351.633 (1986), provides that a foreign corporation which commits a tort in Missouri is deemed to be doing business in Missouri. This statute has been upheld as constitutional by the Missouri Supreme Court. State *ex rel.* Deere & Co. v. Pinnell, 454 S.W.2d 889 (Mo. 1970) (en banc). The question is whether personal injury resulting from defective design can be interpreted as "committing a tort in whole or in part" in Missouri. Under the interpretation first given in *Gray v. American Radiator*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), a tort is committed where the last act necessary to render the actor liable occurs. *Id.* at 434, 176 N.E.2d at 762-63.

Because the plaintiff in *Honda R&D* was injured in Missouri, the long-arm statute was satisfied. Hence, the *Honda R&D* court needed to conduct only a due process analysis.

8. U.S. CONST. amend. XIV.
12. Honda Research & Dev. Co. v. Adolf, 718 S.W.2d 550 (Mo. Ct. App. 1986). "That the machine in question was designed and developed for the United States market... does not subject Honda Research to Missouri jurisdiction absent other necessary contacts." *Id.* at 552-53.
14. E.g., *Burger King Corp.* v. Rudzewicz, 471 U.S. 462 (1985); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); *Kulko* v. Superior Court of
The plaintiff in *Honda R&D*, Mary Alice Schneider, brought a personal injury action based upon strict product liability for injuries sustained while riding a Honda ATC.\textsuperscript{15} Plaintiff filed the action against the manufacturer of the ATC, Honda Motor Company Ltd. (hereinafter Honda Ltd.), the distributor/importer, American Honda Motor Co. Inc. (hereinafter American Honda), and the local dealer, St. Louis Honda. In an amended petition, the plaintiff added the designer, Honda R&D. Honda R&D, a Japanese corporation, filed a motion to dismiss for lack of personal jurisdiction which the trial court denied. The design company then filed its petition for a writ of mandamus,\textsuperscript{16} in which it requested the appellate court to reverse the order denying Honda R&D’s motion and to dismiss Honda R&D for lack of personal jurisdiction. The appellate court agreed with Honda R&D, and ordered the trial judge to dismiss Honda R&D from the lawsuit.\textsuperscript{17} The issue before the court was whether Honda R&D was subject to the personal jurisdiction of Missouri courts based on the sale of the ATC in Missouri.\textsuperscript{18}

---


16. Mandamus is the remedy used to prevent a court from acting in excess of its jurisdiction. State ex rel. Brooks Erection & Constr. Co. v. Gaertner, 639 S.W.2d 848, 849 (Mo. Ct. App. 1982). Since the present case is in the pretrial stage, the facts of the underlying dispute have not yet been fully developed. For purposes of a jurisdictional analysis, however, the germane aspects of the substantive dispute are sufficiently clear.

17. *Honda Research & Dev.*, 718 S.W.2d at 553.

18. Although the plaintiff’s brief discussed the issue, the court did not address the possibility of jurisdiction over Honda R&D based on the proximity of ties between the three Honda companies.

In his concurring opinion Judge Gaertner discussed the issue of corporate inter-relationship. The plaintiff added Honda R&D in order to obtain discovery about the ATC design. Honda Ltd. and American Honda had claimed that the design information was in Honda R&D’s exclusive possession. Judge Gaertner pointed out:

That our decision upholds the separateness of the three corporate entities for jurisdictional purposes should not necessarily be interpreted as determinative of the “control” by the parent of documents in the “custody or possession” of a wholly owned subsidiary, as those terms are used in Rule 58.01. Nor do we decide today the possible consequences if it be made to appear that corporate separation rather than departmental or divisional control of the phases of the total undertaking is merely a subterfuge adopted or utilized for the purpose of evading discovery (a suggestion hinted at but not briefed by respondent herein).

*Honda Research & Dev.*, 718 S.W.2d at 553 (Gaertner, J., concurring). Three cases involving the Honda triumvirate shed light on the issue of corporate control and suggest that Judge Gaertner’s concerns are valid.

In *Dorsey v. Honda Motor Co.*, 655 F.2d 650 (5th Cir. 1981), Honda Ltd. expressly agreed to assume liability for any design or manufacturing defect involving the Honda AN600 (a small car) even though Honda R&D had designed the car. On remand, *Dorsey v. American Honda Motor Co.*, 670 F.2d 21 (5th Cir. 1982), Honda
Honda R&D is one of three corporations responsible for the presence of the ATC in Missouri. A look at the functions of each of the three Honda companies and a brief history of the ATC's development and distribution will help illustrate the jurisdictional issues involved. American Honda is the exclusive national distributor of Honda products in the United States. For many years Honda Ltd., which manufactures all Honda products, made only motorcycles. American Honda requested Honda R&D to develop a product suitable for sale in the American market during winter, as motorcycles were not highly marketable during that time. Honda R&D endeavored to design a recreational vehicle for use on snow, mud and dirt. After extensive research and testing, Honda R&D was satisfied that it had developed a product marketable in the United States.

When the design was ready for manufacture, Honda R&D sold the design to Honda Ltd., pursuant to its role in the overall Honda scheme. The Ltd. tried to disclaim any liability for design defect, pointing an accusatory finger at Honda R&D. The court refused to accept the argument, noting that since the distinction between the two companies was blurred at trial, it was too late for Honda Ltd. to propose this defense.

In another case involving Honda, a Florida appellate court found that while Honda R&D is "separate and distinct" from Honda Ltd., it is nonetheless a wholly owned subsidiary. American Honda Motor Co. v. Vetour, 435 So. 2d 368 (Fla. Dist. Ct. App. 1983). As such, Honda Ltd. was required to produce the discovery materials it claimed were in Honda R&D's exclusive control.

In Fjelsted v. American Honda Motor Co., 762 F.2d 1334 (9th Cir. 1985), Honda attempted a third permutation of its corporate shell game, likewise without success. American Honda, the distributor, claimed it could not get the requested discovery information from Honda Ltd., the manufacturer, because Honda Ltd. would not release the materials unless it was a party to the lawsuit. The court rejected the argument and compelled American Honda to produce the desired discovery materials.

These cases reveal a pattern of behavior: Honda Ltd., as the parent corporation, offered different presentations of its corporate structure in different factual situations, apparently in search of an arrangement which would insulate its design materials from discovery (absent the inclusion of Honda R&D as a party). This misleading and inconsistent behavior proffered by Honda is surely the type of "subterfuge" contemplated by Judge Gaertner.

20. Statement of Edward Glynn, Assistant Vice President of the Motor Cycle Sales Division of the American Honda Motor Corp. before the Consumer Product Safety Commission at the Industry/CPSC Meeting on Safety Programs for Three-Wheel All-Terrain Vehicles (October 23, 1984); see also Statement of American Honda, supra note 4.
21. Statement of American Honda, supra note 4. The original ATC was introduced into the American market in 1970. In the late 1970's a Honda R&D engineer was in America and discovered that Americans were using the ATC for such other purposes as agriculture, ranching, and racing. Id. In response, Honda R&D developed more specialized vehicles to serve these diverse markets.
22. Honda R&D's role in the overall scheme is only to design. The chief engineer of Honda R&D has testified that the sole function of his company is to "sell blueprints" to Honda Ltd.. Dorsey v. Honda Motor Co., 655 F.2d 650, 660 (5th Cir. 1981).
amount of consideration paid, if any, is unknown. The sale took place entirely within Japan. Honda Ltd. used this design to manufacture the ATC. The ATC was then sold to American Honda, which brought the vehicle to America and introduced it in 1970. This system of design, manufacture, and distribution is still used by the Honda companies and accounts for the presence in Missouri of the ATC which injured the plaintiff.

Honda R&D is exclusively a Japanese corporation. It produces no tangible goods, nor does it have any business offices or other contacts with the United States. The company's only connection to Missouri is the sale and use of products which it designs. The evolution of the personal jurisdiction analysis demonstrates the considerations that need to be addressed in determining whether this relationship is sufficient to allow Missouri courts to assert jurisdiction over Honda R&D.

The modern approach to personal jurisdiction emanates from the Supreme Court's opinion in International Shoe Co. v. Washington:

[D]ue 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, that 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."

The Court adopted this standard in response to the growing economic and commercial complexities of society. The previous jurisdictional test, which depended on the presence of the defendant within the forum, had become ineffective in light of the prevalence of multi-state transactions. The Inter-

---

24. Id.
25. The modern approach is distinguished from the doctrine of Pennoyer v. Neff, 95 U.S. 714 (1877), which is summarized as follows:

Pennoyer limited state jurisdiction to physical presence within the state's boundaries as shown by four separate situations: first, if the defendant was domiciled within the forum state; second, if the defendant was served with process while physically present within the forum state; third, if the defendant had consented to jurisdiction within the forum state; and fourth, if the defendant had property within the jurisdiction of the forum that was attached prior to commencement of the suit.

26. 326 U.S. 310 (1945). Washington State was seeking unemployment contributions from International Shoe because the company employed thirteen salesmen in Washington. International Shoe, which was headquartered in St. Louis, Missouri, argued that Washington did not have jurisdiction because International Shoe's "activities within the state were not sufficient to manifest its 'presence' there." Id. at 315.
27. Id. at 316 (citing Milliken v. Meyer, 311 U.S. 457, 463 (1920)).
national Shoe standard is intentionally couched in general propositions which are flexible and broad in scope. The Supreme Court wanted its general guidelines applicable to the plethora of jurisdictional questions addressed by the lower courts. Because the International Shoe standard is so flexible, however, no "mechanical or quantitative" application is possible, and absolute answers to jurisdictional questions are rare. Rather, the "minimum contacts" test depends upon the "reasonableness" of jurisdiction in the particular situation, and reasonableness depends upon the unique facts of the individual case at hand. Later cases applying the minimum contacts standard flesh out the types of contacts which are of a sufficient "quality and nature" to support personal jurisdiction.

The general guidelines of International Shoe were specifically applied in McGee v. International Life Insurance Company. The Supreme Court allowed California to assert jurisdiction over a Texas insurance company whose only contact with California was an insurance contract sent by the company to California. McGee offers two considerations to the due process analysis. First, modern transportation and communication minimize the inconveniences of defending a suit in a state where the defendant engages in economic activity. Second, a court should consider any interest the forum state may have in adjudicating the plaintiff's type of claim for its residents when considering the propriety of jurisdiction.

Concerned that McGee might be interpreted too broadly, the Court held in Hanson v. Denckla that there must be some act by which a defendant

28. Id. at 319.
29. "We recognize that this determination is one in which few answers will be written in black and white. The greys are dominant and even among those the shades are innumerable." Kulko v. Superior Court, 436 U.S. 84, 92 (1978) (citing Estin v. Estin, 334 U.S. 541, 545 (1948)).
32. The plaintiff in McGee was the beneficiary of a life insurance policy between defendant and plaintiff's decedent. Decedent had purchased the policy by mail from Texas. When the Texas insurance company refused to honor the policy, plaintiff brought suit in California where she obtained a default judgment. Plaintiff subsequently brought the judgment to Texas. The Texas court refused to execute on it, however, on the basis that California lacked jurisdiction. The Supreme Court found jurisdiction despite the lack of any other contacts between the defendant and California, and ordered the Texas court to enforce the California judgment. Id. at 224.
33. The McGee court noted a "fundamental transformation in our national economy over the years. Today many commercial transactions touch two or more states and involve parties separated by a full continent. . . . At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity." Id. at 222-23.
34. Id.
35. The court in Hanson v. Denckla, 357 U.S. 235 (1958), stated:
"purposefully avails itself" of the privileges of conducting activities in the forum before jurisdiction is proper. In *Hanson*, Dora Donner, a Pennsylvania resident, executed a trust with a Delaware trust company in which she retained a power of appointment. She thereafter moved to Florida, where she executed her power of appointment. In a dispute over her estate, the issue was whether Florida courts had jurisdiction over the Delaware trust company. The Court distinguished this case from *McGee* in that the cause of action in *Hanson* did not "arise out of a transaction consummated in the forum state." The contested transaction, the establishment of the trust, had no connection to Florida other than the subsequent relocation of the settlor to that state. The insurance contract in *McGee*, on the other hand, was entered into in the forum state of California. *Hanson's* contribution to the magic language of the due process analysis is two-fold: the defendant must "purposefully avail" himself in the forum, and the "unilateral activity" of the plaintiff cannot be sufficient to support jurisdiction.

The reasoning of *McGee* and *Hanson* was reaffirmed by the Court in *Kulko v. Superior Court of California*. The dispute involved a child support proceeding between divorced parents. The mother brought suit in California against the father, who was a resident of New York. Noting that due process

In response to these changes [technological advances], the requirements for personal jurisdiction over non-resident defendants have evolved from the rigid rule of *Pennoyer v. Neff*, to the flexible standard of *International Shoe*. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. . . . However 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 pre-requisite to its exercise of power over him.

*Id.* at 251.


37. *Id.* at 253.

38. *Id.* at 238-44.

39. *Id.* at 251.

40. Because the touchstones of the due process analysis are fairness and reasonableness, it is a very flexible standard. The same general language of a few Supreme Court decisions is applied to a myriad of factual situations which arise, with varying results. "Magic language" refers to those phrases encountered time and again in opinions wrestling with the personal jurisdiction question.

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

42. 436 U.S. 84 (1978).

43. This suit arose out of a divorce settlement between plaintiff Sharon Kulko Horn and defendant Ezra Kulko. During their marriage, Horn and Kulko were residents of New York. Upon separation and subsequent divorce, Horn moved to California with one of the couple's two children. The other child, Darwin, stayed with Kulko in New York during the school year and with his mother in California during the summer. Pursuant to the divorce agreement, Kulko paid no child support, but he gave Horn $3000 to help maintain the children in the summer. Three and one half years after the divorce, Darwin asked for and received his father's permission to
is satisfied when jurisdiction is "reasonable and fair," the Court gave three reasons for denying California jurisdiction over the father. First, the father did not "purposefully derive benefit" from the child's presence in California, any benefit to the father (i.e., financial gain) was due not to the child's residence in California but rather to his absence from New York. Second, the father did not initiate the contact with California. He merely acquiesced to his child's wishes. Third, public policy seeks to avoid straining family relations by forcing a father to choose between honoring the desires of his child or protecting himself from defending a suit in a distant forum. Thus, Kulko adds three factors to the minimum contacts analysis. Did the defendant derive any benefits, directly or indirectly, from his contact with the forum state? Did the defendant initiate the contacts with the forum state? Is there any substantial public policy matter involved in the determination of jurisdiction?

The first Supreme Court case to apply the minimum contacts test to a products liability case was World-Wide Volkswagen v. Woodson, decided in 1980. Plaintiffs purchased an Audi automobile in New York from Seaway, a local Audi dealer. The following year, as the plaintiffs were travelling through Oklahoma en route to their new home in Arizona, another vehicle struck the Audi from the rear. The accident caused a fire which severely burned the plaintiffs. Plaintiffs subsequently filed suit in Oklahoma based on strict products liability, alleging defective design and placement of the Audi's gas tank and fuel system. Named as defendants were the manufacturer (Audi), the importer (Volkswagen of America), the regional distributor in New York (World-Wide), and Seaway. World-Wide and Seaway entered special appearances to challenge Oklahoma's jurisdiction. Although World-Wide distributed in only three states, (New York, New Jersey, and Connecticut) and had no contacts with Oklahoma other than the presence of the plaintiffs' car


44. Kulko, 436 U.S. at 92.
45. Id. at 96.
46. Id. at 97.
47. Id. at 97-98.
49. Id. at 288.
50. Id.
51. Audi and Volkswagen of America, both foreign corporations, did not contest jurisdiction in Oklahoma or the United States.
there, the Oklahoma Supreme Court upheld jurisdiction over World-Wide and Seaway. The court based its decision on the inherent mobility of the automobile and the benefits received indirectly from the Oklahoma highway system.

The United States Supreme Court reversed, focusing on the necessity of notice. Jurisdiction may not be asserted unless a defendant's activities are such that he can "reasonably anticipate being haled into court" in the forum state. Contacts with the forum resulting from independent occurrences over which the defendant has no influence cannot support jurisdiction. If a defendant's connection to a forum arises from purposeful conduct directed toward the forum, such as employing salesmen within the state or shipping commercial goods into it, so that his relation to the forum results from intentional conduct rather than random chance, the due process notice requirement is satisfied. To illustrate, a New York car dealer can certainly foresee that a car he sells may be driven on the highways of America and be involved in an accident in Oklahoma. This type of foreseeability is inadequate to support jurisdiction, however, because the unilateral act of the purchaser, not the efforts of the dealer, account for the auto's presence in Oklahoma. Due process foreseeability has a limited scope. It compels a defendant to anticipate only those results caused by his activity which is within, or intended to reach, the forum. He is not accountable for the volitional acts of others which a tort definition may classify as "foreseeable."

Despite the foreseeability problems voiced by the majority, Justice Brennan would have found jurisdiction in Oklahoma. His dissent in World-Wide emphasizes the policies underlying constitutional limitations on jurisdiction. Basing his opinion on the touchstones of "fairness and reasonableness,"

52. Observing that World-Wide's association with Audi was "contractual only," the Court deemed the four corporations "independent." Thus, the acts of the manufacturer and importer were not imputed to World-Wide. World-Wide Volkswagen, 444 U.S. at 289.
54. World-Wide Volkswagen, 444 U.S. at 295. In other words, the defendant must be able to foresee the possibility of a suit in the forum state. However, the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.
57. See id.
58. See id. at 298.
59. See supra note 54.
60. World-Wide Volkswagen, 444 U.S. at 299 (Brennan, J., dissenting).
61. Id. at 300 (Brennan, J., dissenting).
Justice Brennan foreshadowed his majority opinion in *Burger King v. Rudzewicz* by declaring minimum contacts only the first step in the jurisdictional analysis. In addition, the court should take notice of "other considerations," including: the forum state's interest in the dispute, the actual burden on the defendant, whether the suit was filed by a resident of the forum, whether the state has enacted a long-arm statute covering the cause of action, whether the cause of action arose out of the defendant's activity in the forum, and whether the defendant derives substantial benefits from forums other than its own. If the state has a sufficient interest in the litigation, Justice Brennan places a burden on the defendant to show some "real injury to a constitutionally protected interest."  

In *Burger King*, the Court adopted Brennan's view that substantial "other considerations" allow for a lesser showing of minimum contacts necessary to establish jurisdiction. The Court bifurcated the jurisdictional analysis into "minimum contacts" and "other considerations." After determining what contacts, if any, the defendant has with the forum, the following considerations should be addressed to determine if jurisdiction is reasonable: the plaintiff's interest in obtaining convenient and effective relief, the interfering interests of other states, the convenience of the parties, the maintenance of an only fair play and substantial justice analysis in order to distinguish them from the "minimum contacts" analysis.

62. 471 U.S. 462 (1985). Interestingly, Justice White wrote the majority opinion in *World-Wide* and Justice Brennan filed a dissent. In *Burger King* their roles were reversed: Brennan wrote for the majority and White joined in Justice Stevens' dissenting opinion. *Burger King*, 471 U.S. at 487.  
63. "Surely *International Shoe* contemplated that the significance of contacts necessary to support jurisdiction would diminish if some other consideration helped establish that jurisdiction would be fair and reasonable." *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 300 (1980).  
64. Specifically, notice should be taken of the "State's manifest interest in providing effective means of redress for its citizens." *Id.*  
65. *Id.* (citing *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957)).  
66. *Id.* at 302.  
67. *See id.* at 305.  
68. *Id.*  
69. *Id.* at 307.  
70. *Id.* at 312.  
71. 471 U.S. 462 (1985). Defendant entered into a franchising agreement with plaintiff, a Florida corporation, to operate a Burger King restaurant in Michigan. Most of defendant's contacts with Burger King were through a district office in Michigan, although he was aware that Burger King's corporate headquarters were in Miami. A federal district court in Florida found Florida to have jurisdiction. The Eleventh Circuit reversed. The Supreme Court, finding that the franchise contract had substantial contact with Florida, that defendant purposefully directed his activities at Florida, and that defendant could reasonably foresee being haled into court in Florida, reversed the court of appeals and found jurisdiction in Florida. *Id.* at 487.  
72. *Id.* at 477.  
73. *See id.*  
74. These considerations will be referred to as the "fair play and substantial justice" analysis in order to distinguish them from the "minimum contacts" analysis.  
terstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interests of the several states in furthering fundamental social policies.

In addition to the two-part analysis, Burger King adopts another aspect of Justice Brennan's dissent in Worldwide. A defendant who has purposefully directed his activities at forum residents "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." In Burger King, the Supreme Court expanded the authority of state courts to assert jurisdiction over non-resident defendants by allowing the courts to consider underlying policies as well as the traditional minimum contacts.

From International Shoe to Burger King, the Supreme Court addressed many different factual situations. The "magic language" issuing from each decision, however, was designed for the same purpose: to serve the particular inquiry into "reasonableness and fairness." While the jurisdictional analysis is extremely fact-oriented and intricate, the overriding purpose is clear. Rather than provide any mechanical test, the Court's analysis suggests factors and policies to consider in order to determine whether asserting jurisdiction over this defendant in these circumstances is fair, reasonable and just.

In Honda R&D, the court of appeals held that Missouri did not have jurisdiction over Honda Research and Development Company, the designer of the Honda ATC. The court, however, conducted only the first part of the jurisdictional analysis, the minimum contacts aspect. Because Honda R&D did not sell anything which entered Missouri, the court held that it could not reasonably foresee the possibility of litigation in this state. The court quotes the following language from Worldwide Volkswagen:

[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

76. Id.
77. Id.
78. See supra note 69.
80. The underlying dispute in International Shoe was unemployment fund contributions; in Hanson the distribution of a trust fund; in Kulko a divorce agreement; in World-Wide a products liability action; and in Burger King a franchise agreement.
82. Id. at 551.
83. Id. at 552.
84. Honda Research & Dev., 718 S.W.2d at 552. (citing World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980).)
The court interpreted this language to apply only to manufacturers and distributors, not designers. The fact that Honda R&D designed the ATC specifically for the American market was found insufficient to support jurisdiction absent any other contacts. Finding no additional ties between the Japanese corporation and Missouri, the court ordered Honda R&D dismissed from the suit.

The critical concern at the time of *Pennoyer v. Neff*, was the burden on the defendant if he were compelled to defend a suit in the forum state. At the time of *Pennoyer*, a defendant faced a significant hardship in traveling to a distant state. This consideration, however, has been significantly deemphasized in recent years, starting with *McGee*. Modern jumbo jets make travel from Japan to Missouri almost as easy as a drive across town. Packing an extra suitcase containing the desired discovery materials can hardly be a constitutionally cognizable burden.

While defendant’s burden has lost much of its vitality as a factor in the jurisdictional analysis, the purposeful availment factor has gained prominence. Due process demands that a defendant’s activities in connection with the forum be of such a quality and nature that he have “fair warning” that he may be haled into court there. This consideration assures that the defendant’s contact with the forum is not the result of events which are “random, fortuitous, or attenuated.” A defendant who specifically directs his conduct toward the forum state can hardly assert that the resulting contact is the result of some unforeseeable event. The concern, as quoted by the *Honda R&D* court, is that the mere “unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state.” [emphasis added].

The court misinterprets this language. The unilateral activity in the present case is not that of the person claiming a relationship between Honda R&D and Missouri (i.e., the plaintiff). Honda R&D’s contacts with Missouri exist entirely without regard to any behavior on the plaintiff’s part. The plaintiff bought the ATC in Missouri and was injured by it there. This

---

85. *Honda Research & Dev.*, 718 S.W.2d at 552.
86. *Id.* at 552-53.
87. *Id.* at 553.
88. 95 U.S. 714 (1877).
89. 355 U.S. 220 (1957).
90. “Assuming that a State gives a nonresident defendant adequate notice and opportunity to defend, I do not think the Due Process Clause is offended merely because the defendant has to board a plane to get to the site of the trial.” World-Wide Volkswagen v. Woodson, 444 U.S. 286, 311 (1980) (Brennan, J., dissenting).
92. *Id.* at 475.
93. *Honda Research & Dev.*, 718 S.W.2d at 551 (citing Hanson v. Denckla, 357 U.S. 235, 253 (1958)).
distinguishes the present case from *World-Wide*, in which the defendant’s relation to Oklahoma arose solely because of conduct by the plaintiff. *World-wide* did not contemplate protecting the defendant whose contacts with the forum owe to “interstate obligations voluntarily assumed.”

Courts have developed a “stream of commerce” theory of personal jurisdiction to deal with the exact situation presented in *Honda R&D*, but this court did not apply it. The approach is not distinct from the *International Shoe* analysis, rather, it is a special adaptation of *International Shoe* created in response to modern commercial customs, in which goods travel across state and national boundaries and through extensive distribution schemes before reaching the ultimate consumer. Participation in any stage of the stream of interstate commerce satisfies the “purposeful availment” requirement of the due process test. The general proposition is that a corporation which willfully injects a product into commercial channels, aware of the ultimate destination of that product, will be held accountable wherever that product may cause injury. *Honda R&D* was aware that its design would result in the ATC’s sale in America. In fact, the purpose of all its efforts

94. See *Burger King*, 471 U.S. at 474.


98. In *Hedrick v. Daiko Shoji Co.*, Osaka, 715 F.2d 1355, 1358-59 (9th Cir. 1983), a Japanese rope manufacturer was subject to jurisdiction in Oregon where a longshoreman was injured by a defect in the rope. The court said: “[T]he company sent a defective product into the world market with knowledge that harm could occur wherever a defect should manifest itself.” *Id.* The Federal District Court in Pennsylvania asserted jurisdiction over a French corporation which designed and manufactured ball bearings expressly for a helicopter which was manufactured in Italy and sent to the United States in Rockwell Int’l Corp. v. Costruzioni Aeronautiche Giov. Anni Agusta, S.P.A. & S.N.F.A., 553 F. Supp. 328, 332-33 (E.D. Penn. 1982). The court noted that “[d]uring the design and testing of the ball bearings . . . [the defendant] was aware that the A-109 helicopter was targeted for the . . . market in the United States. . . .” *Id.* at 330. In *Oswalt v. Scripto*, 616 F.2d 191 (5th Cir. 1980), a Japanese cigarette lighter manufacturer was subject to jurisdiction in Texas because it had knowledge that the American distributor of its product marketed the lighters in Texas. *Id.* at 199-200.

99. Courts readily accept the proposition that corporations dealing with the United States as one market are subject to the jurisdiction of each individual state. See, e.g., *Oswalt*, 616 F.2d 191.
was to see a product marketable in America.\textsuperscript{100} An extended stream of commerce analysis is beyond the scope of this Note. Suffice it to say, however, that many courts considering public policy\textsuperscript{101} and the factors\textsuperscript{102} involved in a stream of commerce analysis would allow Missouri jurisdiction over Honda R&D.

Even without the benefit of the stream of commerce theory, the court could have found that Honda R&D, by designing the ATC specifically for the United States, purposefully availed itself to the American market's privileges and benefits. The ATC's presence in Missouri is the result of intentional design, manufacturing and distribution efforts on the part of the three Honda companies. The ATC was created by the engineers of Honda R&D. The activity of Honda Ltd. and American Honda, while debatably unilateral,\textsuperscript{103} did not result in a fortuitous contact with Missouri. Their efforts were but further steps leading to the fruition of Honda R&D's goal in designing the ATC: to exploit the American market by introducing a product suitable for use in winter. The "quality and nature" of Honda R&D's activity, namely designing a product for the express purpose of seeing that product distributed in the American market, satisfies the purposeful availment requirement.

Honda R&D directed itself toward the American market in order to make a profit. Because of the ATC's success,\textsuperscript{104} Honda R&D has certainly "derived substantial benefits"\textsuperscript{105} from international commerce. Indeed, no market exists in Japan for the ATC.\textsuperscript{106} Profits from the ATC's design flow

\begin{itemize}
\item[\textsuperscript{100}] See supra note 16 and accompanying text.
\item[\textsuperscript{101}] "With the breakdown in international commercial barriers, and the resulting fact that a substantial portion of goods sold to American consumers today is manufactured in foreign lands, we would be striking a serious blow at consumer protection if we did not recognize such jurisdiction. We cannot expect consumers in this state to travel to Japan . . . to litigate injuries from tortious acts committed in this state. . . ." Omstead v. Brader Heaters, Inc., 5 Wash. App. 258, 272, 487 P.2d 234, 242-43 (1971).
\item[\textsuperscript{102}] The following factors weigh in favor of asserting jurisdiction over a foreign defendant under the stream of commerce approach: defendant's awareness that the product will find its way to the forum market; a marketing scheme which depends on consumption in a foreign state; indirect marketing aimed at the forum; defendant's location at the beginning of the chain, especially if no effort is made to limit the scope of distribution; a cause of action which arises out of the defendant's product's presence in the forum; heavier burden on plaintiff bringing suit in defendant's nation than on defendant litigating in America; absence of conflicting interests between defendant's nation and the forum; more efficient resolution in the forum state; likelihood that plaintiff will not have convenient or effective relief in the defendant's nation; and dispute arises from commercial dealing. See cases cited supra note 97.
\item[\textsuperscript{103}] If the corporate inter-relationship is extremely close, the acts of Honda Ltd. and American Honda may not be unilateral. The acts of one may be attributed to all three. See cases cited supra note 16.
\item[\textsuperscript{104}] See supra note 2.
\item[\textsuperscript{105}] Kulko v. Superior Court, 436 U.S. 84 (1978).
\item[\textsuperscript{106}] Statement of Edward Glynn, supra note 20.
\end{itemize}
from the American market's need for a winter product, and the ATC's fulfillment of that need. If Honda R&D received consideration from Honda Ltd. for the right to manufacture the ATC, its benefit consists of the amount of consideration. If not, it either does charity work, or it enjoys the proceeds of ATC sales in America as a part of the Honda corporate family. At the very least, the popularity of the ATC gives Honda R&D the reputation of being a successful design company. The ATC owes its success to the consumers of the United States. Accountability to American consumers in American courts should be the cost of this success.

The due process analysis puts potential defendants on notice that certain activities in relation to a forum will subject them to that forum's jurisdiction. Due process allows them to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."\(^{107}\) Honda R&D structured its "primary conduct," designing the ATC, directly at America from the very beginning.\(^{108}\) If its conduct had not resulted in some contact with America, namely the sale of the ATC, its efforts would have been expended in vain. Product developers with any knowledge of the American market are well aware of the extensive product liability actions available to the American consumer. Honda R&D could have taken the precautionary measures suggested by the World-Wide Court.\(^{109}\) These options include procuring insurance, passing on the costs by charging a higher price for the design, compelling indemnity from Honda Ltd., or refusing to allow the ATC to be marketed in America (the absurdity of this suggestion reflects the weakness of R&D's argument). Honda R&D structured its conduct so as to indirectly serve the American market. A product which is never designed can never be built, and a product never built is never sold. Honda R&D's intentional efforts to serve the American market satisfy the minimum contacts branch of the jurisdictional analysis.

As demonstrated, Honda R&D has substantial contacts with Missouri. While these contacts may, by themselves, be sufficient to support jurisdiction, the social policies underlying the second part of the Burger King analysis reduce the contacts necessary to satisfy due process.\(^{110}\) Four "other considerations" specifically listed by the Supreme Court bolster the claim of jurisdiction in Missouri.

First, Missouri has a "manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors."\(^{111}\) Missouri also seeks to protect its residents from defectively designed products which injure and kill. The state has implemented these interests through

---

108. See supra note 20 and accompanying text.
110. See supra note 71 and accompanying text.
statutory enactment of a long-arm statute\textsuperscript{112} and judicial adoption of a strict products liability cause of action.\textsuperscript{113}

In addition to the state's interest, a court should consider the "plaintiff's interest in convenient and effective relief."\textsuperscript{114} The plaintiff's cause of action was based on defective design. She had joined Honda R&D as a party in order to seek discovery materials which the originally named defendants claimed they could not obtain.\textsuperscript{115} The court suggested that the plaintiff may gain discovery from Honda R&D even if Honda R&D was not named.\textsuperscript{116} This is not necessarily so. Discovery from Japanese companies is excruciatingly difficult even when jurisdiction is established.\textsuperscript{117} The court's ruling effectively prohibited the plaintiff from gaining information on which she had to base her case. The expansive jurisdictional test, designed to promote substantive fairness over commercial form, abhors such a grossly unfair situation.\textsuperscript{118} Without discovery, which can be accomplished only through joinder of Honda R&D, the plaintiff will have neither convenient nor effective relief.

A third consideration is "the interstate judicial system's interest in obtaining the most efficient resolution of controversies."\textsuperscript{119} This reflects a primary purpose of the due process analysis, which is to prevent a state from invading the sovereignty of another state's courts.\textsuperscript{120} In the present situation, Missouri would offend no other state, as the only other possible forum is Japan. American courts discount constitutional concerns when the potential usurpation of sovereignty involves foreign nations.\textsuperscript{121}

\begin{thebibliography}{99}
\bibitem{Note112} Mo. Rev. Stat. § 506.500 (1986).
\bibitem{Note114} Burger King, 471 U.S. at 477.
\bibitem{Note115} Brief for Respondent at 10, \textit{Honda Research \\& Dev.}, 718 S.W.2d 550 (1986) (No. 51655).
\bibitem{Note116} "It may be difficult, but plaintiffs can obtain the design information through the deposition of a witness who is not a party." \textit{Honda Research \\& Dev.}, 718 S.W.2d at 553.
\bibitem{Note117} "Japan is not a signatory to the Multilateral Convention on Taking of Evidence in Civil or Commercial Matters (the Hague Convention). Thus discovery materials provided for in the Convention are not available. Also, Japanese law and procedure are substantially different from our own." Fox, \textit{Discovery from Japanese Companies}, 22 TRIAL 18 (August 1986).
\bibitem{Note118} "Jurisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party is at a 'severe disadvantage' in comparison to his opponent." Burger King v. Rudzewicz, 471 U.S. 462, 478 (1985).
\bibitem{Note119} \textit{Id.} at 477.
\bibitem{Note120} World-Wide Volkswagen v. Woodson, 444 U.S. 286, 292 (1980).
\end{thebibliography}
The fourth factor, "the shared interest of the several States in furthering substantive social policies," is the most significant in this case. All states seek to protect their residents from injury by defective products. To further this goal, most states have recognized a cause of action in strict products liability. Essentially, a business responsible for the marketing of a defective product is liable for any injury caused by the defect, regardless of any fault or negligence on the company's part.213 Strict product liability incorporates several social policies. A producer is in a better position to bear the cost of an injury than is the innocent consumer. The producer can procure insurance and/or spread out the costs in the form of higher prices to all consumers.214 Because of their tremendous power, corporations need an external incentive to be socially responsible.215 Since profitability strikes closest to home for corporate decision-makers, forcing them to pay for defective products regardless of fault provides an incentive to market safer goods. In addition, a designer is in the best position to remedy design defects. Strict liability places the burden on the designer to discover and remedy such hazards.

If litigation is commenced due to a faulty product, several other reasons justify strict liability. The ordinary consumer is not an engineer, nor is he familiar with the developmental processes of complex products such as the ATC. The designer/manufacturer has control over all information concerning a product's design and manufacture. Strict liability compels those with knowledge, the developers, to come forth with information vital to a determination of liability. With the aid of experts, a plaintiff can critically examine and specifically demonstrate any alleged defect. Thus, strict liability has two beneficiaries. The plaintiff benefits by gaining access to information with which to make a case. The welfare of the general public is also advanced, as producers have an incentive to make an effort to discover product defects before they result in injury.

The holding in Honda R&D subverts these policies. As mentioned, Honda Ltd. and American Honda claim that Honda R&D retains exclusive possession of design information.216 If Honda R&D is not joined, this information...

125. "It is one of the goals of litigation to compel corporations to exercise a conscience in making decisions regarding product safety by making failure to do so interfere with their profits." Smith & Shapiro, Corporate Liability in Defective Products Cases, 19 Trial 80 (Nov. 1983).
126. The Honda companies offer conflicting explanations of the design materials' location. Honda R&D maintains that it sold its design of the ATC to Honda Ltd., yet Honda Ltd. says it does not have the information. Honda Ltd. does not explain how it is able to manufacture the ATC without knowing design specifications.
The plaintiff may never be able prove a defect, consequently, she will bear the cost of her injuries. The public welfare suffers in two ways. First, an intensive examination of the design by the plaintiff may have revealed a heretofore unknown defect. The defect could then be remedied, assuring no future injuries. Secondly, Honda R&D has no incentive to inspect its design. Even if a plaintiff does receive a favorable judgment, no cash will flow from Honda R&D’s pocket. No legal duty will prevent new models of the ATC from incorporating the known, existing defect, resulting in many more injuries to Missouri residents.

The “fair play and substantial justice” analysis demonstrates compelling policy reasons in support of Missouri’s jurisdiction. These policies combined with the substantial minimum contacts between the designer and the forum certainly satisfy the due process requirement. Perhaps Justice Brennan penned a rallying cry for the cases developing the modern jurisdictional analysis: “[T]he Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.”

This cry falls on deaf ears in the present case. The precedent of Honda R&D encourages a foreign manufacturer to split its research and design department into a separate, wholly owned subsidiary for the sole purpose of reducing the chance of a plaintiff receiving a product liability award. American consumers injured by defectively designed goods will face two choices: litigate in a foreign country or bear the cost of injury themselves. The decision also places one more case in the books which conducts only half the modern due process analysis. Burger King represents the culmination of forty years of cases developing a “reasonable and fair” jurisdictional analysis. The court in Honda R&D fails to take advantage of the Supreme Court’s wisdom.

Jeffrey J. Simon

Also, American Honda gave an extensive history of the ATC’s development, including Honda R&D’s response to significant technical problems encountered along the way in a report to Congress. Statement of American Honda, supra note 4.

127. See supra note 117.