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Hybrid Personal Jurisdiction: It's Not General Jurisdiction or Specific Jurisdiction, But Is It Constitutional?

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HYBRID PERSONAL JURISDICTION: IT'S NOT GENERAL JURISDICTION, OR SPECIFIC JURISDICTION, BUT IS IT CONSTITUTIONAL?

Linda Sandstrom Simard[†]

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INTRODUCTION

While attending Wentworth Junior High School in Calumet City, Illinois, Michael Lemke punctured his right hand with a pencil.¹ Later the same day, St. Margaret Hospital in Hammond, Indiana, admitted Michael. A staff doctor performed surgery to remove the pencil from his hand.² Two days after the surgery, St. Margaret Hospital transferred Michael to a hospital in Chicago, Illinois.³ Four days after the accident, Michael died in Chicago.⁴

Betty Sue Lemke,⁵ Michael's mother, filed a medical malpractice action in Illinois state court against St. Margaret Hospital, the staff doctor, and Wentworth Junior High School.⁶ Dr. Patel, the staff doctor, filed a motion to dismiss the action for lack of personal jurisdiction.⁷ He argued that he was not subject to jurisdiction in Illinois because he was a citizen and resident of Indiana, he was licensed to practice medicine only in Indiana, and the surgery that gave rise to the lawsuit occurred in Indiana.⁸ The plaintiff argued that Dr. Patel was subject to jurisdiction in Illinois because he regularly and continuously solicited and treated Illinois patients, while receiving Illinois public and private funds for his services.⁹

In analyzing whether a forum may exercise personal jurisdiction, courts must consider: (1) whether the relevant long-arm stat-

¹ See *Lemke v. St. Margaret Hospital*, 552 F. Supp. 833 (N.D. Ill. 1982).

² See *id.* at 835.

³ See *id.*

⁴ See *id.*

⁵ Both Michael and Betty Sue Lemke were residents of Illinois at the time of the accident and at the time she filed suit. See *id.* at 835.

⁶ See *id.* St. Margaret Hospital and Dr. Patel filed an uncontested petition to remove the action to federal court. See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.* at 835-36.

ute confers jurisdiction; and (2) whether the exercise of jurisdiction is permitted by the Due Process Clause of the United States Constitution. For purposes of discussion,¹⁰ assume that the relevant long-arm statute provides:

A court may exercise personal jurisdiction over a person, who acts directly or by an agent . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state¹¹

This provision would authorize jurisdiction over Dr. Patel. He allegedly caused injury in the forum (Michael died in Chicago, Illinois) by an act outside of the forum (Dr. Patel performed the surgery in Indiana), and he regularly solicits business in Illinois.

However, does the Due Process Clause permit jurisdiction in this case? The Supreme Court has recognized two types of personal jurisdiction that are authorized by the Constitution: (1) general

¹⁰ The Illinois long-arm statute does not contain a hybrid jurisdiction provision like the one quoted in the text. See ILL. COMP. STAT. § 110/2-209 (West 1985). The court in the *Lemke* case upheld the exercise of jurisdiction on the ground that Dr. Patel was "doing business" in Illinois and thus could be subject to general jurisdiction.

¹¹ UNIF. INTERSTATE AND INT'L PROCEDURE ACT § 1.03, 13 U.L.A. 361 (1962). The following state statutes have long-arm provisions that are similar to the language quoted in the text: ALASKA STAT. § 09.05.015(a)(4) (Michie 1996); CONN. GEN. STAT. ANN. § 52-59b(3) (West 1991); D.C. CODE ANN. § 13-423(a)(4) (1981); FLA. STAT. ANN. § 48.193(1)(f) (West 1994); GA. CODE ANN. § 9-10-91(3) (1982); IND. CODE ANN. § 4.4(A)(3) (West 1996); KAN. STAT. ANN. § 60-308(b)(7) (1994); KY. REV. STAT. ANN. § 454.210(2)(a)(4) & (5) (Banks-Baldwin 1994); LA. REV. STAT. ANN. § 13:3201(a)(4) (West 1983); MASS. GEN. LAWS ANN. ch. 223A § 3(d) (West 1985); NEB. REV. STAT. § 25-536(1)(d) (1995); N.Y. C.P.L.R. § 302(a)(3) (McKinney 1996); N.C. GEN. STAT. § 1-75.4(4) (1997); OHIO REV. CODE ANN. § 2307.382(A)(4)-(5) (Anderson 1995); OR. REV. STAT. § 43(D) (1995); S.C. CODE ANN. § 36-2-803(1)(d) (Law Co-op. 1996); VA. CODE ANN. § 8.01-328.1(A)(4)-(5) (Michie 1992); V.I. CODE ANN. tit. 5, § 4903(4) (1996); W. VA. CODE § 56-3-33(a)(4)-(5) (1997); WIS. STAT. ANN. § 801.05(4) (West 1994).

Two states have adopted long-arm provisions that extend jurisdiction to any defendant who:

Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services or things used or consumed in the State.

DEL. CODE ANN. tit. 10, § 3104(c)(4) (1996); see also MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (1997). These provisions are significantly broader than the uniform statute because they are not limited to injuries occurring within the forum state.

jurisdiction, which confers jurisdiction over a defendant for any cause of action if the defendant has substantial and continuous contacts with the forum; and (2) specific jurisdiction, which confers jurisdiction over a defendant for causes of action that arise out of the defendant's contacts with the forum. Although the facts of the *Lemke* case satisfy the long-arm provision quoted above, neither general nor specific jurisdiction is independently satisfied in the *Lemke* case.¹² Rather, the long-arm provision appears to combine the requirements of general jurisdiction and specific jurisdiction without satisfying either type of jurisdiction completely. This Article refers to this type of jurisdiction as "hybrid jurisdiction."

This Article will analyze the constitutionality of hybrid jurisdiction. First, the Article describes the distinction between specific and general jurisdiction and concludes that while many factual scenarios fall neatly into one category or the other, a significant group of cases exhibit characteristics of both types of jurisdiction without completely satisfying either. Next, the Article considers the constitutional requirements for general jurisdiction and determines that hybrid jurisdiction does not satisfy these requirements. The Article then analyzes the constitutional requirements for specific jurisdiction. The Article suggests that although hybrid jurisdiction does not satisfy the traditional test for specific jurisdiction requiring a claim to "arise out of" the defendant's purposeful contacts with the forum, some instances of hybrid jurisdiction may satisfy the underlying goals of specific jurisdiction and thus be constitutional. Finally, the Article proposes a framework for analyzing whether hybrid jurisdiction cases satisfy the underlying goals of specific jurisdiction, and applies this framework in different factual scenarios.

I. BACKGROUND: THE DISTINCTION BETWEEN SPECIFIC AND GENERAL PERSONAL JURISDICTION

The modern doctrine of personal jurisdiction derives from an oft-quoted sentence in *International Shoe Co. v. Washington*.¹³ The Supreme Court held 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

¹² See *infra* notes 23-25 and accompanying text.

¹³ 326 U.S. 310 (1945).

contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."¹⁴

While there are no mechanical or quantitative criteria to determine "traditional notions of fair play and substantial justice," the Court in *International Shoe* described several jurisdictional landmarks to help courts navigate these uncertain waters. First, a defendant must have some contacts, ties, or relations to a state before that state can exercise jurisdiction over a defendant who is not present in the forum.¹⁵ Second, if a defendant has one or more contacts with the forum, the state may be able to subject the defendant to jurisdiction for suits arising out of the forum contacts.¹⁶ Third, if a defendant maintains continuous and substantial contacts with a state, the state undoubtedly may exercise jurisdiction over the defendant for claims that arise out of the contacts, and may even be able to exercise jurisdiction for claims that are unrelated to the forum state activities.¹⁷

In 1966, Professors Arthur von Mehren and Donald Trautman examined the doctrine of personal jurisdiction, and suggested that it consists of two distinct types of jurisdiction.¹⁸ The first type of jurisdiction, which von Mehren and Trautman labeled *specific jurisdiction*, exists when the defendant has a limited number of contacts with the forum state, but the cause of action for which jurisdiction is being asserted arises out of (or at least relates to) the contacts.¹⁹ Thus, specific jurisdiction is dispute-specific.

In *Lemke* case, the facts indicate Dr. Patel regularly solicited and treated Illinois residents.²⁰ Thus, an Illinois court could exercise specific jurisdiction over the doctor for a cause of action arising out of a patient's decision to go to Indiana for medical treatment as a result of the solicitation. However, it could not exercise jurisdiction over the doctor for other causes of action that had no connection to Illinois.

The second type of jurisdiction, which von Mehren and

¹⁴ *Id.* at 316.

¹⁵ *See id.*

¹⁶ *See id.* at 317.

¹⁷ *See id.* at 317-18.

¹⁸ *See* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1135-36 (1966).

¹⁹ *See id.* at 1144-45.

²⁰ *See Lemke v. St. Margaret Hospital*, 552 F. Supp. 833, 838 (N.D. Ill. 1982).

Trautman labeled as *general jurisdiction*, does not depend upon the cause of action, but rather is determined solely by the extent of the defendant's contacts with the state.²¹ In *Lemke*, an Indiana state court could exercise general jurisdiction over Dr. Patel for any cause of action because of his substantial contacts as a domiciliary of Indiana. In 1983, the Supreme Court endorsed the categories of specific and general jurisdiction as two distinct types of *in personam* jurisdiction.²²

While the concepts of general and specific jurisdiction are easily applied to many situations, a significant group of cases does not fall neatly within either jurisdictional paradigm. Continuing with the facts of *Lemke*, Dr. Patel's contacts with Illinois do not meet the level of contacts necessary to allow Illinois to exercise general jurisdiction over him. In *Helicopteros Nacionales de Colombia v. Hall*,²³ the Supreme Court held that the exercise of general jurisdiction over a Colombian defendant would violate the Due Process Clause, even though the defendant had significant contacts with the forum.²⁴ Comparing the defendant's contacts in *Lemke* to those that were considered insufficient in *Helicopteros*, it appears that the Supreme Court would not believe the regular solicitation of Illinois residents was sufficient to confer dispute-blind jurisdiction over the doctor. Moreover, although an Illinois court could exercise specific jurisdiction over the doctor for a claim arising out of his solicitation in Illinois, there were no facts indicating that Michael Lemke went to Indiana as a result of the doctor's contacts with Illinois. Although neither general nor specific jurisdiction was independently satisfied, some of the elements of specific jurisdiction were present—a claim arising out of an injury in Illinois—and some of the elements of general jurisdiction were present—a significant ongoing relationship with Illinois.²⁵

²¹ See von Mehren & Trautman, *supra* note 18, at 1136-37.

²² See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.8-9 (1984) (separating and defining individually "specific jurisdiction" and "general jurisdiction").

²³ 466 U.S. 408 (1984).

²⁴ See *id.*; see also *infra* notes 37-38 and accompanying text.

²⁵ Other examples of jurisdictional situations that do not meet either jurisdictional paradigm are easy to imagine. For example, suppose that a Massachusetts citizen owns a summer cottage in Maine and that on his way to the cottage he causes an accident in New Hampshire with a citizen of Maine. The other driver files suit in Maine. In determining whether the Massachusetts citizen should be subject to jurisdiction in Maine, we must consider his contacts with the state: He has purposefully created contacts with the state by choosing to own property within the state's territory. Is this sufficient to confer general jurisdiction over any cause of action? Probably not. See, e.g., *Shaffer v. Heitner*,

One might assert that because hybrid jurisdiction does not independently satisfy either jurisdictional paradigm, it must be unconstitutional. At least one commentator, however, has argued that such a hybrid situation might not be unconstitutional.²⁶ Professor William Richman has attempted to synthesize the notions of specific and general jurisdiction by asserting that there are situations where neither general nor specific jurisdiction would be satisfied, but where the exercise of jurisdiction would still be proper "because the case is a *near-miss on both* paradigms."²⁷ He suggests that personal jurisdiction is based upon a sliding scale model of the relationship between the quantity and quality of the defendant's contacts on the one hand, and the relatedness of the contacts to the cause of action on the other.²⁸ Thus, Professor Richman asserts that general and specific jurisdiction are not discrete categories of jurisdiction but rather "simply the two opposite ends of this sliding scale."²⁹ While the sliding scale approach has some appeal, for reasons stated later in this Article, it is not the appropriate response to the hybrid jurisdiction situation.³⁰ This interpretation does not necessarily mean, however, that the Constitution requires courts to reject jurisdiction in all hybrid scenarios.

433 U.S. 186 (1977) (stating that ownership of personal property located in the forum is not sufficient to confer general jurisdiction). Is it sufficient to confer specific jurisdiction for this particular cause of action? Although he had created a purposeful contact with Maine by owning property there, was this contact sufficiently related to the car accident in New Hampshire to justify jurisdiction? The cause of action did not "arise out of" the defendant's property ownership in the same sense as, for example, a dispute concerning the ownership of the property. Yet if it were not for the property in Maine, he probably would not have been driving through New Hampshire when he caused the accident. The jurisdictional analysis of this fact pattern depends upon how closely related a cause of action must be to the defendant's contacts to justify specific jurisdiction. While this issue is touched upon here, a full analysis of the appropriate definition of the nexus requirement is beyond the scope of this Article.

²⁶ See William M. Richman, *A Sliding Scale to Supplement the Distinction Between General and Specific Jurisdiction*, 72 CAL. L. REV. 1328 (1984).

²⁷ See *id.* at 1343.

²⁸ See *id.* at 1345 ("As the quantity and quality of the defendant's forum contacts increase, a weaker connection between the plaintiff's claim and those contacts is permissible; as the quantity and quality of the defendant's forum contacts decrease, a stronger connection between the plaintiff's claim and those contacts is required.").

²⁹ *Id.*

³⁰ See *infra* notes 91-102 and accompanying text.

II. CAN HYBRID JURISDICTION BE JUSTIFIED AS A FORM OF GENERAL JURISDICTION?

A. *The Constitutional Requirements of General Jurisdiction*

In determining whether to exercise general personal jurisdiction over a defendant, a court should look to the defendant's affiliation with the forum state without regard to the nature of the dispute being adjudicated.³¹ While it is well settled that a state may exercise general jurisdiction over a citizen, a habitual resident, or a domiciliary of the state,³² it is not clear what other relationships between a forum and defendant, if any, will be sufficient to confer dispute-blind jurisdiction. The two leading Supreme Court cases analyzing general jurisdiction over nondomiciliary defendants, *Perkins v. Benguet Consolidated Mining Co.*³³ and *Helicopteros Nacionales de Colombia v. Hall*,³⁴ provide limited guidance on the application of the doctrine. In *Perkins*, the Supreme Court held that a foreign mining corporation that temporarily halted its regular mining activities in the Philippine Islands and conducted "a continuous and systematic, but limited, part of its general business" in Ohio was subject to jurisdiction in Ohio for a suit that had no relation to the defendant's Ohio activities.³⁵ In reaching the conclusion that the defendant's activities in Ohio were "sufficiently

³¹ See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.9 (1984) (defining general jurisdiction as the exercise of personal jurisdiction over "a defendant in a suit not arising from or related to the defendant's contacts with the forum . . ."); see also Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 80-81 (discussing the several bases for general jurisdiction); Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 611-12 (1988) (discussing the importance of maintaining the dispute-blind character of general jurisdiction); von Mehren & Trautman, *supra* note 18, at 1136 (defining general jurisdiction as power to adjudicate "any kind of controversy" when sufficient relationship between the forum and the defendant has been established).

³² See Twitchell, *supra* note 31, at 633; von Mehren & Trautman, *supra* note 18, at 1137 ("American practice bases general jurisdiction . . . on three types of relationship between the defendant and the forum: his domicile or habitual residence; his presence; and his consent . . .") (footnotes omitted).

General jurisdiction based upon in-state service of process is an anomaly to the extent that it allows a court to exercise dispute blind jurisdiction over a defendant that may not have significant ties to the forum state. See generally *Burnham v. Superior Court*, 495 U.S. 604 (1990) (affirming the power of California to exercise personal jurisdiction over a defendant who, while visiting the state, was served with a California court summons and his estranged wife's divorce petition).

³³ 342 U.S. 437 (1952).

³⁴ 466 U.S. 408 (1984).

³⁵ See *Perkins*, 342 U.S. at 438.

substantial" to justify the exercise of dispute-blind jurisdiction, the Court relied upon the fact that the defendant temporarily maintained an office in Ohio from which the President of the company and two employees carried on business correspondence, performed banking activities from two Ohio bank accounts, held directors' meetings, purchased machinery, and maintained corporate files.³⁶ Although the Court determined that this particular combination of facts was sufficient to confer general jurisdiction in this case, it failed to elucidate the necessary characteristics of dispute-blind jurisdiction for future applications of the doctrine.

Thirty years after *Perkins*, the Court again considered the application of general jurisdiction, this time deciding that the particular facts were not sufficient to justify dispute blind jurisdiction. In *Helicopteros*, the Court held that Texas did not have a sufficient affiliation with the Colombian defendant to justify the state's exercise of personal jurisdiction over a dispute involving a helicopter accident that occurred in Peru.³⁷ As in *Perkins*, the Court listed the defendant's forum contacts, which included sending a corporate officer to Texas to negotiate a contract, purchasing over four million dollars worth of helicopters and equipment in Texas over an eight year period of time, sending its employees for training in Texas, and accepting checks drawn on a Texas bank account.³⁸ The Court discredited the one-time negotiation session as not being "continuous and systematic" in nature,³⁹ and held the acceptance of Texas drawn checks as being the "unilateral activity of another party," thus removing both contacts from the jurisdictional analysis.⁴⁰ The Court then held that "purchases and related trips, standing alone, are not a sufficient basis for a State's assertions of [general] jurisdiction."⁴¹ Again the Court provided little or no guidance as to what characteristics would be deemed sufficient to justify a state's exercise of general jurisdiction in future cases.

In the absence of substantial guidance from the Supreme Court,

³⁶ *Id.* at 447-48.

³⁷ *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 418-19 (1984). In *Helicopteros*, the Court did not even attempt to apply a specific jurisdiction analysis, noting that "[a]ll parties to the present case concede that respondents' claims against Helicol did not 'arise out of,' and are not related to, Helicol's activities within Texas." *Id.* at 415 (footnote omitted).

³⁸ *See id.* at 410-11.

³⁹ *See id.* at 416.

⁴⁰ *Id.* at 417.

⁴¹ *Id.* (citing *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923)).

several scholars have attempted to flesh out the underlying rationale and limits of general jurisdiction. Professor Mary Twitchell believes that the essential function of general jurisdiction is to provide a predictable "forum where a defendant may always be sued."⁴² She has described the "traditional indicia" of general jurisdiction to include: "a home base, an agent for service of process, a local office, or the pursuance of business from a tangible locale within the state."⁴³ Professor Twitchell asserts that in many instances, courts incorrectly apply general jurisdiction when the claims upon which jurisdiction is asserted are tenuously related to the defendants' forum activities, but the defendants lack any of the traditional justifications of applying general jurisdiction.⁴⁴ The use of general jurisdiction in this situation dilutes the requirements for dispute-blind jurisdiction and also hinders the development of a comprehensive body of dispute-specific jurisdiction by failing to confront difficult specific-jurisdiction scenarios.⁴⁵ Professor Twitchell asserts that general jurisdiction is only justifiable in situations where the affiliation between the defendant and the forum is so significant that the defendant would expect to be sued there for most claims asserted against it.⁴⁶ She would limit general jurisdiction to "true 'insiders.'"⁴⁷

Professor Lea Brilmayer has also addressed the subject of general jurisdiction.⁴⁸ In attempting to ascertain the justification for general jurisdiction, she notes that domicile—particularly an individual's domicile—is traditionally the strongest basis for the assertion of general jurisdiction.⁴⁹ She then considers the reasons why individual domicile presents a compelling case for allowing states to exercise dispute blind jurisdiction, concluding that domicile satisfies four major theoretical justifications for the exercise of jurisdiction: (1) convenience to the defendant; (2) convenience to

⁴² Twitchell, *supra* note 31, at 667.

⁴³ *Id.* at 635.

⁴⁴ *See id.* at 635. She notes that this occurrence is particularly common in suits involving sales of products or services in the forum. *See id.*

⁴⁵ *See id.* at 650.

⁴⁶ *See id.* at 637, 680 (asserting that courts "[n]ever ask the question that is crucial to a truly dispute-blind jurisdiction analysis: whether the defendant's contacts are such that the exercise of jurisdiction would be fair for *most* causes of action brought by the plaintiff") (footnote omitted).

⁴⁷ *Id.* at 651.

⁴⁸ *See* Lea Brilmayer, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721 (1988).

⁴⁹ *See id.* at 730.

the plaintiff by providing a predictable place where the defendant may be sued; (3) sovereign power to compel a defendant to appear in court and to enforce a judgment; and (4) the exchange of benefits (voting, welfare, education, etc.) and burdens (for example being subject to the state's laws, including jurisdictional legislation) between the defendant and the forum.⁵⁰ Based on this analysis, she concludes that the defendant's state of domicile, state of incorporation, and principal place of business form sufficient grounds for the exercise of general jurisdiction because they satisfy these jurisdictional justifications.⁵¹ Additionally, general jurisdiction is justified if a defendant conducts sufficient intra-state activities to make it fair for the state to regulate the activities of the defendant as an insider.⁵²

The commonality between the theories of general jurisdiction described by Professors Twitchell and Brilmayer is substantial. Both professors believe that general jurisdiction is appropriate over a limited class of defendants—those that are, or resemble, “insiders” at the time the lawsuit is filed.⁵³ Most of the characteristics

⁵⁰ See *id.* at 730-33 (“When a state applies its long-arm statute to attain jurisdiction over a domiciliary, it simply requires the domiciliary to adhere to a local law that theoretically the party had a chance to influence.”).

⁵¹ See *id.* at 728-35.

⁵² See *id.* at 744. Professor Brilmayer distinguishes between intra-state activities and inter-state activities because of their effects on interstate commerce. She asserts that in-state activities by outsiders are more likely to involve interstate transactions than in-state activities by locals and thus, to the extent that predicated jurisdiction on in-state activities discourages such activities, jurisdiction over outsiders on this ground may violate the commerce clause. See *id.* at 743. She thus asserts that a defendant's interstate activity should be “discounted” in the general jurisdiction analysis in order to avoid unduly burdening interstate commerce. See *id.*

Professor Brilmayer considers other traditional grounds for exercising general jurisdiction, such as transient jurisdiction, consent, and property. Although she asserts that transient jurisdiction has “outlived its theoretical justifications,” *id.* at 755, the Supreme Court endorsed the continued vitality of transient presence as a basis for general jurisdiction. See *Burnham v. Superior Court*, 495 U.S. 604 (1990) (holding that service of process on a New Jersey resident while visiting California sufficed to confer personal jurisdiction over him). Professor Brilmayer asserts that statutorily-induced consent to general jurisdiction is not constitutionally justifiable. See Brilmayer, *supra* note 48, at 758-60 (asserting that statutes “which in effect require consent to jurisdiction, circumvent all due process notions of fairness underlying minimum contacts analysis and expose the fiction of consent as a basis for jurisdiction”). Finally, she considers the relevance of property contacts in the general jurisdiction analysis and asserts that such contacts should not be completely discounted and ignored in the analysis. See *id.* at 766.

⁵³ Compare Brilmayer, *supra* note 48, at 782-83, with Twitchell, *supra* note 31, at 680 (“The court should exercise general jurisdiction only if it finds that the defendant's ties with the forum are so significant that the defendant should have expected to be an-

from which "insider" status may be implied involve unique relationships between the defendant and the forum—domicile, incorporation, and principal place of business.⁵⁴ While "insider" status may also be based upon a relationship with the state that is not unique, both Professors Brilmayer and Twitchell suggest limiting this category of general jurisdiction to defendants who conduct substantial activities from within the state, such as from a local office.⁵⁵

From a pragmatic perspective, limiting general jurisdiction to these categories of situations provides a relatively clear test for courts to determine general jurisdiction. The unique relationships are based upon well-defined legal standards that courts regularly apply in determining diversity jurisdiction.⁵⁶ Moreover, the nonunique relationships—in which the defendant conducts substantial intrastate activities—may not pose difficult application problems either. For example, a defendant will not usually open a local office unless there is sufficient continuous activity in the state to warrant the expense of maintaining the office. Thus, it would seem that the existence of a local office will tend to also show continuity and substantiality of the contacts. These limited categories also tend to distinguish the grounds for general jurisdiction from the grounds that justify specific jurisdiction, helping to avoid the temptation to mix them together to find jurisdiction over "near-miss" situations. While the Supreme Court has never taken the opportunity to clearly define the characteristics of general jurisdiction, limiting general jurisdiction to "insiders", or those who resemble insiders, is theoretically justifiable and pragmatically appealing.

B. Does Hybrid Jurisdiction Satisfy the Constitutional Requirements for General Jurisdiction?

Hybrid jurisdiction provisions often condition the exercise of jurisdiction on whether the defendant "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state"⁵⁷ One could argue that this lan-

swerable to most claims asserted against it within the forum.").

⁵⁴ See Brilmayer, *supra* note 48, at 728-35.

⁵⁵ See *id.* at 744; Twitchell, *supra* note 31, at 635.

⁵⁶ A look at some of the diversity jurisdiction cases may indeed indicate that domicile is not necessarily "clear" or "easy" to determine, but the legal standard upon which it is based is well-defined and thus provides courts with a clear road map of the factual issues that are relevant.

⁵⁷ UNIF. INTERSTATE AND INT'L PROCEDURE ACT § 1.03, 13 U.L.A. 361 (1986); *see*

guage authorizes general jurisdiction because the provision requires ongoing contact with the state. Moreover, the provision is written in the present tense, thus focusing on the defendant's contacts with the forum at the time the suit is filed, rather than the defendant's contacts at the time the events giving rise to the suit occurred. Notwithstanding these general jurisdiction characteristics, the existing hybrid jurisdiction provisions do not satisfy the constitutional requirements for general jurisdiction.

There are several problems with attempting to "fit" hybrid jurisdiction into the general jurisdiction paradigm. First, the long-arm statutes that attempt to authorize hybrid jurisdiction are not dispute-blind. For example, the hybrid jurisdiction provision contained in the Uniform Act authorizes jurisdiction only over causes of action, "arising from the person's . . . causing tortious injury in this state by an act or omission outside this state"⁵⁸ Whether the cause of action arises out of a tortious injury that occurred within the forum state is irrelevant to a general jurisdiction analysis.⁵⁹

Second, even if the existing hybrid-jurisdiction provisions attempted to authorize dispute-blind jurisdiction, they would likely not satisfy the constitutional standard for general jurisdiction. The hybrid jurisdiction provision contained in the Uniform Act and most other state long-arm provisions are not narrowly tailored to meet the high threshold of contacts required by the Supreme Court.⁶⁰ For example, one could argue that the defendants in *Helicopteros* engaged in a "persistent course of conduct" in Texas from 1970-77 by purchasing helicopters and other parts and regularly sending their employees there for training. Yet, we know that the exercise of general personal jurisdiction in that case violated the Due Process Clause of the Constitution.⁶¹

supra note 11 for a list of states that have adopted hybrid jurisdiction provisions.

⁵⁸ UNIF. INTERSTATE AND INT'L PROCEDURE ACT § 1.03, 13 U.L.A. 361 (1986).

⁵⁹ The Delaware and Maryland hybrid provisions come close to conferring dispute blind jurisdiction. Both statutes confer jurisdiction over a cause of action arising out of a tortious injury within the state or outside the state by conduct that occurred outside of the state, so long as the nonresident regularly carries on business, or engages in other persistent courses of conduct in the state. DEL. CODE ANN. tit. 10, § 3104(c)(4) (Supp. 1996); MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (1997). Even these statutes are not truly dispute blind, however, because they are limited to tortious claims that arise from out-of-state conduct. *See id.*

⁶⁰ *See supra* note 11 (listing these statutes).

⁶¹ *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 408, 411 (1984).

Moreover, the provisions do not distinguish between forum activities from a local office and forum activities from outside of the state, even though activities from within the state appear to provide a stronger argument for the assertion of general jurisdiction than activities from outside of the state. Any defendant that regularly conducts forum activities will satisfy the language of the statute, even though the activities may be so insignificant that the defendant would not expect to be haled into court there for any cause of action.

Thus, the existing hybrid jurisdictional provisions do not authorize dispute-blind jurisdiction, and even if they did, they are not narrowly tailored so as to meet the apparent underlying constitutional rationale of general jurisdiction. Therefore, hybrid jurisdiction cannot be justified as a form of general jurisdiction.

III. CAN HYBRID JURISDICTION BE JUSTIFIED AS A FORM OF SPECIFIC JURISDICTION?

A. *The Constitutional Requirements of Specific Jurisdiction: The Traditional Doctrine*

Specific personal jurisdiction requires that: (1) a defendant purposefully create a contact with the forum state that gives rise to (or at least relates to) the cause of action for which jurisdiction is being asserted, and (2) the exercise of jurisdiction be reasonable.⁶² The Court described the interplay between these criteria in *Burger King Corp. v. Rudzewicz*.⁶³

Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction could comport with "fair play and substantial justice." 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 States in fur-

^{62.} See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985).

^{63.} 471 U.S. 462 (1985).

thering fundamental substantive social policies." These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.⁶⁴

Unlike general jurisdiction, specific jurisdiction may hinge on very few contacts—as few as one⁶⁵—between the forum and the defendant if the contacts are purposeful and the cause of action that is the subject of the suit arises out of the forum contact. Specific jurisdiction does not require physical presence in the forum.⁶⁶ Rather, a minimum contact may be created by anyone who purposefully directs his or her activities toward a state, even if that person has never set foot in the state.⁶⁷

The hybrid jurisdiction provisions at issue in this Article satisfy several of the requirements for specific jurisdiction. They require a defendant to have "regular," "persistent," or "substantial" contacts with the forum state,⁶⁸ certainly more than are minimally required

⁶⁴ *Id.* at 476-77 (citations omitted) (alteration in original).

⁶⁵ *See, e.g.,* *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957) (holding a Texas life insurance company liable for judgment entered against it in California when the company's sole connection with the forum was a life insurance contract with a California resident).

⁶⁶ *See Burger King*, 471 U.S. at 476 (holding that when a defendant has engaged in significant activities within the forum state, jurisdiction may not be avoided based on lack of physical presence); *Calder v. Jones*, 465 U.S. 783, 788-89 (1984) (holding that Florida residents, who wrote and published a tabloid article which allegedly defamed a California resident, may be subject to jurisdiction in California). The Court in *Calder* held that causing injury to California resident in California is sufficient to subject them to jurisdiction. *See id.*

⁶⁷ For example, if a person stands 10 feet from the state boundary and fires a pistol into the state causing property damage, the state may exercise jurisdiction over the person for a claim arising out of the shot because he has created a purposeful contact with the state and the cause of action arises out of the shot. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971) ("Causing Effects in State by Act Done Elsewhere").

⁶⁸ The Uniform Act applies if the defendant causes injury in the forum and "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state." UNIF. INTERSTATE AND INT'L PROCEDURE ACT § 1.03(a)(4), 13 U.L.A. 361 (1986). It is interesting to note that the first two categories of conduct—regularly doing business in the state or engaging in persistent conduct in the state—require the defendant to purposefully create a relationship with the state. The third category of conduct on the other hand—de-

to exercise specific jurisdiction. Moreover, the provisions are dispute-specific, allowing jurisdiction only over a cause of action arising out of an injury in the forum caused by the defendant. Notwithstanding these characteristics, the hybrid jurisdiction provisions do not satisfy the traditional specific jurisdiction paradigm because they do not require the plaintiff's cause of action to arise out of (or even relate to) the defendant's forum contacts. The following section of this Article will consider whether jurisdiction may be constitutionally justifiable in the absence of a causal relationship between the plaintiff's claim and the defendant's forum contacts and, if so, how courts should determine the constitutionality of jurisdiction in such factual scenarios.

B. Is a Causal Relationship between the Claim and the Contacts Required by the Constitution?

1. The Supreme Court Has Left the Door Open for One to Argue that Specific Jurisdiction May Rest Upon Contacts that Are Not Causally Related to the Plaintiff's Claim

Although the Supreme Court has repeatedly stated that specific jurisdiction requires a relationship or nexus to exist between the defendant's forum contacts and the plaintiff's cause of action, on several occasions the Justices of the Court have hinted that specific jurisdiction may hinge upon contacts that are not causally related to the plaintiff's claim. In *Asahi Metal Industry Co. v. Superior Court*,⁶⁹ the plaintiff filed a product liability action in California state court alleging that defects in the tire on his motorcycle caused the tire to explode, resulting in serious injury to him and death to his passenger. The plaintiff named several defendants, including the Taiwanese manufacturer of the tire tube, Cheng Shin Rubber Industrial Co., Ltd. ("Cheng Shin").⁷⁰ Cheng Shin filed a claim in the same suit against Asahi Metal Industry Co., Ltd.

iving substantial revenue from goods used or consumed in the state—encompasses less purposeful activity on the part of the defendant. The Supreme Court has not definitively decided whether a defendant who knowingly derives substantial revenue from goods used in the state has a sufficient purposeful contact to justify the exercise of jurisdiction for a claim arising out of the use of the goods in the state. *See, e.g., Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987) (discussing whether placing a product into the stream of commerce creates a purposeful contact with the state where the product is ultimately sold to a consumer).

⁶⁹ 480 U.S. 102 (1987).

⁷⁰ *See id.* at 106.

("Asahi"), the Japanese manufacturer of the tire tube's valve assembly.⁷¹ Ultimately, all of the plaintiff's claims were settled, leaving only the claim between Cheng Shin and Asahi.⁷² Asahi moved to dismiss the claim for lack of personal jurisdiction.⁷³

In determining whether Asahi was subject to personal jurisdiction in California, the Court cited Asahi's business relationship with Cheng Shin and its contacts with the forum. The Court noted that Asahi manufactured tire valve assemblies in Japan and sold them to Cheng Shin in Taiwan, who then incorporated the assemblies into tire tubes.⁷⁴ The sales took place in Taiwan, and the assemblies were shipped from Japan to Taiwan.⁷⁵ Sales to Cheng Shin accounted for 1.24% and 0.44% of Asahi's income in 1981 and 1982 respectively.⁷⁶ Cheng Shin purchased tire valve assemblies from Asahi, as well as other manufacturers, and approximately 20% of Cheng Shin's sales in the United States were in California.⁷⁷ There was evidence indicating that Asahi was aware that Cheng Shin sold its products in California and other states.⁷⁸

In determining whether Asahi was subject to jurisdiction in California, a majority of the Court held that it would be unreasonable to hail Asahi into a California court for this claim.⁷⁹ Justice O'Connor, joined by Chief Justice Rehnquist, Justice Powell and Justice Scalia, believed that Asahi did not have minimum contacts with California because it did not purposefully avail itself of the California market.⁸⁰ In support of this position, Justice O'Connor

⁷¹. *See id.*

⁷². *See id.* at 105-06.

⁷³. *See id.* at 106.

⁷⁴. *See id.*

⁷⁵. *See id.*

⁷⁶. *See id.* It is interesting to note that the Court cites data relating to Asahi's business relations with Cheng Shin for the period from 1978 through 1982 but it does not indicate why it has chosen this time period. Specific jurisdiction is traditionally based upon the defendant's contacts with the forum that gave rise to the claim. If specific jurisdiction required a causal relationship between the defendant's contacts and the plaintiff's claim, the relevant contacts would have to have occurred at or before the time of the plaintiff's accident. General jurisdiction, on the other hand, is based upon the defendant's contacts with the forum at the time the complaint is filed. Here, the accident occurred in 1978 and the plaintiff filed his complaint in 1979, yet the Court cites information relating to Asahi's and Cheng Shin's contacts with California as late as 1983. *See id.* at 106-07.

⁷⁷. *See id.* at 106.

⁷⁸. *See id.* at 106-07 (noting affidavit of Cheng Shin manager).

⁷⁹. *See id.* at 114, 116-17, 121-22 (considering the unreasonableness of subjecting Asahi to California's jurisdiction under these circumstances).

⁸⁰. *See id.* at 112.

stated that:

The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.⁸¹

According to Justice O'Connor, to find specific jurisdiction over a defendant who has placed its product into the stream of commerce with the knowledge that the product would be sold in the forum state, there must be some "additional conduct" indicating that the defendant intended to serve the market.⁸² This is an apparent departure from the traditional specific jurisdiction doctrine. Under the traditional doctrine, only those contacts that give rise to (or relate to) the suit are relevant to the jurisdictional calculation.⁸³ Thus, for example, the fact that the defendant advertised its products in the forum state should be irrelevant to a specific jurisdiction analysis unless the plaintiff purchased the product as a result of the advertisements. By asserting that courts should consider "additional conduct" that is unrelated to the plaintiff's claim—or by failing to limit the "additional conduct" to facts that are related to the cause of action—Justice O'Connor, and the three other justices who joined in this portion of her opinion, seem to endorse a hybrid jurisdiction concept pursuant to which contacts that are unrelated to the plaintiff's cause of action may be used to strengthen otherwise insufficient related contacts.

In *World-Wide Volkswagen Corp. v. Woodson*,⁸⁴ the Court also opened the door for one to argue that contacts that are not

^{81.} *Id.*

^{82.} *See id.*

^{83.} *See supra* note 62 and accompanying text.

^{84.} 444 U.S. 286 (1980).

causally related to the plaintiff's claim, may be considered in the specific jurisdiction analysis. In *World-Wide Volkswagen*, the plaintiffs purchased an Audi vehicle in New York.⁸⁵ After purchasing the vehicle in New York, they embarked upon a cross-country trip and got into a serious accident in Oklahoma.⁸⁶ The plaintiffs filed a product liability suit in Oklahoma state court against the following defendants: the New York dealer that sold them the car; the regional distributor that distributed Audi vehicles in New York, New Jersey, and Connecticut; the importer ("Volkswagen") that imported all Audi vehicles from Germany into the United States; and the automobile manufacturer ("Audi") that manufactured the vehicle at issue in Germany.⁸⁷ The Court dismissed the New York dealer and the regional distributor for lack of personal jurisdiction because they did not purposefully reach out to create a contact with Oklahoma.⁸⁸ In dicta, the Court implied that Audi and Volkswagen, who did not contest personal jurisdiction, could be haled into an Oklahoma court:

[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 owners or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.⁸⁹

Although this language is ambiguous, one plausible interpretation is that the Court is stating that Oklahoma would not violate the Due Process Clause by asserting jurisdiction over Audi and Volkswagen for the Robinsons' cause of action because the defendants purposefully served the Oklahoma market, and because one of their allegedly defective vehicles was the source of injury to the Robinsons

^{85.} See *id.* at 288.

^{86.} See *id.*

^{87.} See *id.*

^{88.} See *id.* at 299.

^{89.} *Id.* at 297-98.

in Oklahoma. Under this interpretation, the Court implied that specific jurisdiction may exist in the absence of a causal relationship between the defendants' forum contacts and the plaintiff's cause of action. The Robinsons purchased their vehicle in New York, and they drove it to Oklahoma. While Audi and Volkswagen had purposeful contacts with Oklahoma (they sold many vehicles from dealerships located in Oklahoma), there was no causal relationship between their forum contacts and the Robinsons' cause of action.⁹⁰

2. If One Argues that a Causal Relationship between the Claim and the Contacts Is Not Required, How Do We Define the Characteristics of Specific Jurisdiction?

While one may argue that language in *Asahi* and *World-Wide Volkswagen* lends support to the argument that specific jurisdiction may rest upon contacts that are not causally related to the plaintiff's claim, the Court has given little indication of the jurisdictional characteristics that might justify the exercise of specific jurisdiction in the absence of a causal nexus.⁹¹

⁹⁰. Admittedly, the quoted language is susceptible to other interpretations. For example, it may be argued that the Court was attempting to clarify the purposeful availment aspect of the minimum contacts test, and not really focusing on the nexus requirement. The sentence preceding the quoted language states:

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," . . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.

Id. at 297.

The Court then expands upon this notion of purposeful availment in the language quoted in the text by stating that a defendant who intentionally serves, either directly or indirectly, a market other than its home market will be considered purposefully availing itself of the benefits of the state. *See id.* Under this interpretation, the Court is not addressing the Robinsons' particular cause of action but rather is focusing on the defendant's direct or indirect contact with the forum. *See id.*

⁹¹. To date, the Supreme Court has provided very little guidance on how the nexus requirement may be satisfied. While the Court has had several opportunities to explore the issue, it has chosen to avoid it. *See, e.g., Carnival Cruise v. Shute*, 499 U.S. 585 (1991); *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984). In the absence of guidance from the Court, lower courts and commentators have struggled with various interpretations of the nexus requirement. Many courts have suggested that a defendant's forum contacts must be causally related to the legal claim that is the subject of the lawsuit, but there is disagreement on how tight the causal link must be. Some courts assert that the defendant's contacts must be a proximate cause of the claim in order to satisfy the specific jurisdiction requirement; other courts assert that if the claim would not have arisen "but for" the defendant's forum contacts, the exercise of specific jurisdiction is appropriate. *See, e.g., Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708 (1st Cir. 1996)

a. The Weaknesses of a Sliding Scale Analysis

As noted earlier in this Article, Professor Richman has suggested that there are situations where jurisdiction should be considered appropriate even though the defendant's contacts are not substantial enough to satisfy the general jurisdiction paradigm and the contacts are not sufficiently related to the plaintiff's cause of action to satisfy the traditional specific jurisdiction paradigm.⁹² Under his sliding scale theory, there is an inverse relationship between the quantity and quality of the defendant's contacts and the relatedness of those contacts to the cause of action.⁹³ Thus, when a defendant has very few contacts with the forum, jurisdiction will exist only if the plaintiff's cause of action is closely related to the contacts, but if a defendant has a significant number of contacts with the forum, jurisdiction will exist for claims that are more tenuously related to the defendant's contacts.⁹⁴ Finally, when a defendant has a sufficient number of contacts to justify the exercise of general jurisdiction, jurisdiction will exist for any cause of action.⁹⁵

While the sliding scale approach is appealing in some respects, there are some difficulties with its application. First, the sliding scale model has an inherent tendency to dilute jurisdictional requirements. As an example of the "near-miss" situation, Professor Richman poses a hypothetical involving a defendant that manufactures a drug in Illinois and distributes it in every state, including California.⁹⁶ The defendant has sales people in California who solicit orders for the drug from doctors, hospitals, and pharmacies in California, and the defendant earns substantial revenue from sales in California.⁹⁷ In the hypothetical, the plaintiff, a California resident, purchases the defendant's product while on a trip in New York and suffers injury in New York.⁹⁸ Professor Richman asserts

("Courts differ over the proper causative threshold [for exercising specific jurisdiction]. The Ninth Circuit is the most forceful defender of the 'but for' test. . . . Our Circuit has been recognized as the main proponent of the proximate cause standard."). Professor Brilmayer suggests that the defendant's forum contacts must form a substantively relevant fact that is part of a well-pleaded complaint in order to satisfy the nexus requirement. See Brilmayer, *How Contacts Count*, 1980 SUP. CT. REV. 82.

⁹² See Richman, *supra* note 26, at 1342-43.

⁹³ See *id.* at 1345.

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ See *id.* at 1343.

⁹⁷ See *id.* at 1344.

⁹⁸ See *id.*

that under the sliding scale model the defendant should be subject to California jurisdiction in this case even though neither specific or general jurisdiction is satisfied.⁹⁹

Suppose, however, a subsequent case arises involving a defendant that has a continuous but smaller quantity of sales in California. In determining jurisdiction over this subsequent case, must the court compare the number of California sales for each defendant to determine how related the cause of action must be? Should the court compare the percentage of California sales to overall sales for each defendant? Is the profit earned in California more or less important than the number of sales in the state? Should the court compare the nature of the goods sold by each defendant to determine the "quality" of the contacts? Finally, even if the court is able to determine that the contacts are less substantial in one case than another, how much more related must the claim be to the forum contacts? While the sliding scale model seems to avoid "an excessively conceptualistic analysis of the notion of claim-relatedness,"¹⁰⁰ it may open the door for courts to exercise jurisdiction over claims that have little connection to the forum state.

The second problem with the sliding scale approach is more theoretical. General jurisdiction requires that a defendant have "continuous and substantial" contacts with the forum state at the time the lawsuit is filed.¹⁰¹ Specific jurisdiction, on the other hand, depends upon the defendant's contacts with the forum at the time the events at issue in the lawsuit occurred. The sliding scale model, however, ignores this temporal distinction and assumes that the same contacts are relevant to both types of jurisdiction.

Using Professor Richman's hypothetical, let us assume that at the time the plaintiff purchased the defective drug in New York and suffered injury, the defendant had no contacts with California. Specific jurisdiction would not exist because the defendant must have at least one contact with the forum state that relates to the cause of action. General jurisdiction, on the other hand, may or may not exist over this cause of action. If the defendant opens a manufacturing plant in California after the plaintiff is injured in

^{99.} *See id.*

^{100.} *Id.* at 1345.

^{101.} *See Metropolitan Life Ins. Co. v. Robertson-CECO Corp.*, 84 F.3d 560, 569 (2d Cir. 1996). In determining if a defendant's contacts meet this standard, courts should consider the defendant's contacts with the forum for a reasonable period of time up to and including the date the lawsuit was filed. *See id.*

New York but before suit is filed, the defendant will be subject to general jurisdiction in California even though it had no contacts with the forum at the time the cause of action arose.¹⁰² Because the sliding scale model considers the defendant's contacts at the time the cause of action arose, not at the time the claim is filed, it fails to recognize the temporal distinction between the contacts that are relevant for specific and general jurisdiction. Thus, it seems that theoretically and pragmatically the categories of general and specific jurisdiction should be considered separate and distinct from each other rather than merely as the two extreme points on a continuum of contacts.

b. A Consideration of the Underlying Constitutional Purposes of Specific Jurisdiction

Although the cases and the sliding scale approach do not necessarily answer the hybrid jurisdiction problem, one need not leap to the conclusion that hybrid jurisdiction is unconstitutional. The following section analyzes the purposes and goals of specific jurisdiction and asserts that if these underlying premises may be satisfied in the absence of a causal nexus between the claim and the contacts, then the exercise of jurisdiction should be considered constitutional.

Since the genesis of the minimum contacts doctrine, the Court has repeatedly cited two competing interests as the foundation of the doctrine: (1) the interest of the defendant in avoiding unfair and inconvenient litigation, and (2) the interest of the forum state in regulating conduct within its boundaries and protecting its citizens. In *International Shoe Co. v. Washington*¹⁰³—where the Court first adopted the minimum contacts doctrine—the Court appeared to balance both of these interests. The Court emphasized the importance of maintaining fairness to the defendant, noting:

To the extent that a [defendant] exercises the privilege of conducting activities within the state . . . the exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the

¹⁰² In many instances, the time between the origination of the claim and filing of a complaint may be sufficiently short to alleviate any significant problem. However, some cases involve an injury that is not discovered for many years and for which the filing of a complaint may be quite delayed.

¹⁰³ 326 U.S. 310 (1945).

activities within the state, a procedure which requires the [defendant] to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.¹⁰⁴

Thus, jurisdiction is fair if there is a consensual exchange of benefits and burdens between the defendant and the forum state. Defendants can control their jurisdictional exposure by deciding whether or not to reap the benefits of contacting the states in exchange for the burden of being subject to jurisdiction for causes of action that arise out of or are connected with the defendants' contacts.

Although the Court in *International Shoe* downplayed the importance of state sovereignty in the jurisdictional calculation—which had been a “bellwether of the *Pennoyer* line of cases” prior to the adoption of the minimum contacts test,¹⁰⁵ the Court did recognize that states have a legitimate interest in adjudicating conflicts arising within their boundaries.¹⁰⁶ By extending jurisdiction to suits where the defendant's own contacts with the forum give rise to the cause of action, the Court on the one hand allowed states to reach out beyond their boundaries to hail in foreign defendants, and on the other hand, limited the reach of state jurisdiction over those absent defendants to only those matters that impact the state. The nexus requirement is instrumental in accomplishing the goal of allowing states to adjudicate controversies over which they have a legitimate interest while not excessively infringing on the sovereignty of sister states.

In subsequent cases, the Court continued to juxtapose the themes of fairness and state sovereignty.¹⁰⁷ In the late 1950's, the Court decided two cases that significantly shaped the minimum contacts doctrine, *McGee v. International Life Insurance Co.*¹⁰⁸

¹⁰⁴ *Id.* at 319.

¹⁰⁵ See *Donatelli v. National Hockey League*, 893 F.2d 459, 463 (1st Cir. 1990).

¹⁰⁶ See *International Shoe*, 326 U.S. at 320 (noting the significant “presence of International Shoe Co. in the state of Washington”).

¹⁰⁷ See *Donatelli*, 893 F.2d at 463 (1st Cir. 1990).

¹⁰⁸ 355 U.S. 220 (1957). In *McGee*, a resident of California purchased a life insurance policy from an Arizona company. See *id.* at 221. Several years later, International Life Insurance Co., a Texas corporation, agreed to assume the insurance policy, and it sent a letter to the insured in California making such an offer. See *id.* The insured accepted the offer and made payments on the policy from California until his death. See *id.* at 221-22. After the insured's death, the company refused to make payment on the policy. See *id.* at 222. The named beneficiary, also a citizen of California, filed suit in a California court. See *id.* at 221, 222. The Supreme Court held that California could exercise personal jurisdiction over the Texas insurance company because: (1) the contract had a “substantial connection” to California, and (2) California had a “manifest interest in providing effective

and *Hanson v. Denckla*.¹⁰⁹ In these two cases, the Court made it clear that while a state's interest is important in the jurisdictional calculus, specific jurisdiction will not exist in the absence of a purposeful contact by the defendant with the forum state.¹¹⁰

During the ensuing years, the Court continued to emphasize the notion that the defendant's purposeful contacts with the forum are a primary concern in the jurisdictional equation. State sovereignty, however, also maintained a role in the equation. In *World-Wide Volkswagen Corp. v. Woodson*,¹¹¹ the Court stated that the minimum contacts doctrine performs two separate but related functions: "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system."¹¹²

In *World-Wide Volkswagen*, the Court noted that foreseeability and predictability are important factors in the minimum contacts analysis. The Court stated:

means of redress for its residents when their insurers refuse to pay claims." *Id.* at 223.

^{109.} 357 U.S. 235 (1958). In *Hanson*, a Pennsylvania domiciliary executed a revocable deed of trust appointing a Delaware trust company as trustee for the trust. *See id.* at 238. Several years after the trust was created, and after the settler had moved to Florida, she amended certain provisions of the trust. *See id.* at 238-39. Upon her death, several legatees of the settler's estate filed suit in Florida state court contesting the validity of the trust. *See id.* at 240-41. According to Florida law, the Florida court could not adjudicate the validity of the trust without obtaining personal jurisdiction over the Delaware trustee. On appeal, the Supreme Court held that the Delaware trustee was not subject to personal jurisdiction in Florida because it had not purposefully created any contacts with Florida. *See id.* at 251. In reaching this conclusion, the Court stated:

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

Id. at 253 (paraphrasing *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

^{110.} In *McGee*, the defendant purposefully created a contact with the state by soliciting an insurance contract in California with a California citizen, and the state had a legitimate interest in adjudicating the dispute concerning the contract. *See McGee*, 355 U.S. at 223. In *Hanson*, the defendant trustee did not reach out to create a contact with Florida, and thus even though the state arguably had a legitimate interest in adjudicating the dispute, this could not overcome the lack of purposeful contacts by the defendant. *See Hanson*, 357 U.S. at 253.

^{111.} 444 U.S. 286 (1980).

^{112.} *Id.* at 292.

[T]he 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 hailed into court there. The 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.¹¹³

Thus, jurisdiction must be based upon the defendants' own conduct in order to allow defendants to predict and control their jurisdictional exposure.

Several years later, in *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites*,¹¹⁴ the Court attempted to clarify the purpose of the minimum contacts doctrine, stating that:

The restriction on state sovereign power described in *World-Wide Volkswagen Corp.* . . . must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns. Furthermore, if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waive the personal jurisdiction requirement.¹¹⁵

As a consequence of this statement in *Bauxites*, it was unclear

¹¹³ *Id.* at 297 (citations omitted).

¹¹⁴ 456 U.S. 694 (1982). The plaintiff, a Delaware corporation, filed suit in Pennsylvania federal court against various insurance companies. *See id.* at 698. Several of the defendants objected to personal jurisdiction. *See id.* When these defendants repeatedly refused to comply with discovery orders seeking information necessary to establish personal jurisdiction, the trial court sanctioned the defendants by assuming the necessary jurisdictional facts were true and thus asserting jurisdiction over the case. *See id.* at 699. On appeal, the defendants argued that this sanction violated their rights under the Due Process Clause, and the Supreme Court held that, unlike subject matter jurisdiction which protects the balance of power between the federal and state governments and is not waivable, personal jurisdiction protects the individual liberty interest preserved by the Due Process Clause, and is waivable. *See id.* at 702-03.

¹¹⁵ *Id.* at 702-03 n.10.

what role sovereign power played in the jurisdictional calculation. Although it seems clear that the defendant's purposeful contacts with the forum state are a *sine qua non* to the exercise of personal jurisdiction under the minimum contacts doctrine, did the Court in *Bauxites* mean that sovereign power is irrelevant to the jurisdictional calculation?¹¹⁶ Several considerations make this position illogical.

First, if fairness to the defendant is the sole consideration of the minimum contacts doctrine, the defendant's purposeful contacts with a forum state should not matter as much as the defendant's contacts to the geographic area surrounding the court. For example, suppose a resident of upstate New York purchases a car in his home town and then gets into an accident in New York with a citizen of Vermont. The Vermont citizen files suit against the New York resident in a Vermont state court which is located only five miles from the defendant's home town and the locus of the accident. The nearest court in New York is several hundred miles away. If personal jurisdiction depended solely upon protecting the defendant from having to defend a case in a distant or inconvenient forum without regard to sovereign power, the Vermont court located just a few miles away would be the most convenient forum to adjudicate the dispute. Yet, under the minimum contacts doctrine as we know it, the Vermont court could not exercise personal jurisdiction in the absence of purposeful contacts by the defendant with the state of Vermont, and the New York court, located hundreds of miles away, would have personal jurisdiction over the dispute.¹¹⁷ This result is logical only if considered in light of the state's interest in regulating conduct within its borders. Vermont

¹¹⁶ This interpretation is suggested in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807 (1985) (citations omitted):

The purpose of th[e minimum contacts] test, of course, is to protect a defendant from the travail of defending in a distant forum, unless the defendant's contacts with the forum make it just to force him to defend there. As we explained in *Woodson*, *supra*, the defendant's contacts should be such that "he should reasonably anticipate being haled" into the forum. In *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, we explained that the requirement that a court have personal jurisdiction comes from the Due Process Clause's protection of the defendant's personal liberty interest, and said that the requirement "represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty."

¹¹⁷ See *Ballard v. Fred E. Rawlins, M.D., Inc.*, 101 Ill. App. 3d 601 (1981) (rejecting plaintiff's argument that jurisdiction is appropriate because the forum court is located within fifteen miles of the defendant's office).

has no legitimate interest in regulating conduct that occurs on New York roadways while New York does have a legitimate interest in regulating such conduct. The example implies that sovereign power is not irrelevant to the personal jurisdiction analysis.

Second, if limitations on sovereign power are irrelevant to the minimum contacts doctrine, then the constitutional limitations on federal and state court jurisdiction should be identical. Yet, they are not. For example, cases have upheld the constitutionality of Federal Rule of Civil Procedure 4(k)(1)(B),¹¹⁸ which authorizes personal jurisdiction over defendants who are joined under Rule 14 or Rule 19 if they are served with process within 100 miles of the court and within a federal judicial district.¹¹⁹ State courts do not have this power. If fairness to the defendant were the sole criterion of personal jurisdiction, there should be no difference between the rule for state courts and federal courts. The most persuasive reason for allowing the discrepancy between state and federal court jurisdiction is because the limitations of personal jurisdiction are at least in part based upon the territorial limits of the sovereign.¹²⁰ It may be argued that because the federal courts are part of a single national sovereign, state boundaries do not pose a constitutional limit on the federal court's ability to exercise personal jurisdiction. Rather, courts and commentators that have considered the issue believe that the Constitution merely requires that a defendant have minimum contacts with the nation as a whole to justify a federal court's exercise of personal jurisdiction.¹²¹

While the quoted language from *Bauxites*¹²² raises some interpretive questions, several concepts are clear. The Court does not expressly declare limitations on sovereign power irrelevant to the

^{118.} See, e.g., *Sprow v. Hartford Ins. Co.*, 594 F.2d 412, 417 (5th Cir. 1979) (relying on *Mississippi Pub. Corp. v. Murphree*, 326 U.S. 438 (1946)).

^{119.} See FED. R. CIV. P. 4(k)(1)(B).

^{120.} See Robert C. Casad, *Personal Jurisdiction in Federal Question Cases*, 70 TEX. L. REV. 1559, 1600 (1992).

^{121.} See *Paper Systems Inc. v. Mitsubishi Corp.*, 967 F. Supp. 364, 369 (E.D. Wis. 1997) (noting that court has personal jurisdiction over defendants who have sufficient contacts with the United States in accordance with the due process clause of the Fifth Amendment); see also Casad, *supra* note 120, at 1601.

This theory is consistent with Rule 4(k)(2), which authorizes a federal court, in federal question cases, to exercise personal jurisdiction over a defendant who is not subject to personal jurisdiction in any state court as long as the exercise of jurisdiction is consistent with the constitution and laws of the United States. See FED. R. CIV. P. 4(k)(2).

^{122.} See *supra* note 115 and accompanying text.

minimum contacts analysis. Rather, the Court attempts to clarify its statement in *World-Wide Volkswagen* by describing the limitation on sovereign power as "a function of the individual liberty interest preserved by the Due Process Clause."¹²³ In essence, the Court seems to be saying that by requiring the defendant to have purposeful contacts with the forum state, the minimum contacts test protects the defendant's individual liberty interest and, consequently, also protects the delicate balance of sovereign power between sister states.¹²⁴

c. A Framework Limiting Hybrid Jurisdiction to Those Cases that Satisfy the Underlying Constitutional Purposes of Specific Jurisdiction

Under the specific jurisdiction doctrine, a defendant must voluntarily choose to "exercise the privilege of conducting activities within the [forum] state," before it will be subject to jurisdiction in the forum.¹²⁵ Even after it is shown that the defendant has created a purposeful contact with the forum, specific jurisdiction is traditionally limited to those obligations that "arise out of or are connected with the activities within the state."¹²⁶ Under hybrid long-arm provisions such as the one contained in the Uniform Laws, the defendant must have "regular," "persistent," or "substantial" contacts with the forum state, and jurisdiction is limited to causes of action arising out of an injury that occurred within the state.¹²⁷ However, such hybrid jurisdiction provisions do not require the injury or cause of action to arise out of (or even relate to) the defendant's purposeful contacts with the forum. Thus, we must consider whether the purposes and goals of specific jurisdiction can be satisfied in the absence of a causal relationship between the plaintiff's claim and the defendant's forum contacts.

Based upon the discussion in the previous section, the functions of the specific jurisdiction doctrine are twofold: (1) it provides the defendant with an opportunity to foresee and control its jurisdic-

¹²³ *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites*, 456 U.S. 694, 703 n.10 (1982).

¹²⁴ *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.13 (1985); *see also* JACK H. FREIDENTHAL ET AL., *CIVIL PROCEDURE* § 3.11, at 137 (1985).

¹²⁵ *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

¹²⁶ *Id.*

¹²⁷ *See supra* note 11 and accompanying text (listing the Uniform Interstate and International Procedure Act and similar state statutes).

tional exposure, and (2) it ensures that the state has a legitimate interest in adjudicating the case by limiting the reach of state court jurisdiction to those disputes that impact the state.¹²⁸ While the presence of a close causal relationship—for example, a proximate causal link—between the plaintiff's cause of action and the defendant's contacts ensures that these two functions are satisfied, jurisdiction need not be rejected merely because a causal nexus is absent. Rather, as long as the underlying goals of the doctrine are satisfied, specific jurisdiction should be allowed even if the cause of action is not causally related to the defendant's forum contacts.

i. Foreseeability

The primary goal of specific jurisdiction is to protect the defendant's individual liberty interest. As noted by the Court in *Burger King*:

By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign, the Due Process Clause 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."¹²⁹

In order to subject a defendant to specific jurisdiction for a claim that is not the proximate result of the defendant's forum contacts, the plaintiff must show that the defendant created purposeful contacts with the state and that the defendant could have foreseen that its contacts could result in factual circumstances similar to those that gave rise to the plaintiff's claim. One may argue that basing jurisdiction on whether the defendant could have foreseen being haled into court in a particular forum merely begs the relevant question, because a defendant can only foresee being haled into court in a forum that the law declares is appropriate.¹³⁰

The response to this critique lies in the distinction between being able to foresee the *legal* consequences that might result from a defendant's contacts, and being able to foresee the *factual* conse-

¹²⁸ See *supra* Part III.B.2.b.

¹²⁹ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted).

¹³⁰ See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 311 n.18 (1980) (Brennan, J., dissenting).

quences that might result from a defendant's contacts. It is true that basing jurisdiction on the defendant's ability to foresee the legal consequences of its conduct—i.e. where it will be subject to jurisdiction—provides no answer to the question. The defendant can only foresee the legal consequences of its actions after the court has declared the legal rules that apply to the conduct. However, a defendant must be able to foresee the factual consequences that could result from conduct in the forum. Thus, if at the time the defendant purposefully avails itself of the forum, the defendant could have foreseen its forum conduct resulting in factual circumstances similar to those that gave rise to the plaintiff's cause of action, then the defendant's contact should form the basis for asserting specific jurisdiction in the forum. Conversely, if at the time the defendant availed itself of the forum it could not have foreseen its forum conduct resulting in factual circumstances similar to those that gave rise to the plaintiff's cause of action, then the defendant's contact with the forum should not form a part of the basis for asserting specific jurisdiction in the forum.

This theory of foreseeability may be illustrated with the facts from *World-Wide Volkswagen*, in which the retail dealer ("Seaway") was incorporated and had its principal place of business in New York, and had no contacts or relationship with Oklahoma.¹³¹ For purposes of discussion, assume the plaintiffs ("the Robinsons") were residents of Connecticut and that they went to Seaway's dealership in New York to purchase their vehicle because they saw an advertisement in a local Connecticut newspaper. After purchasing the vehicle, the Robinsons drove the car to Oklahoma and got into an accident there.

This foreseeability theory does not create jurisdiction where the defendant has no contacts, ties, or relations. For example, if we assume the Robinsons filed suit in Oklahoma one must ask: Could Seaway have foreseen its forum conduct resulting in factual circumstances similar to those that gave rise to this lawsuit? The answer is obviously "no," because Seaway had no relationship with Oklahoma at all, and thus there is no forum conduct from which to foresee any consequences.

Foreseeability is simple to determine in a straight-forward specific jurisdiction case. For example, assume that the Robinsons filed suit in Connecticut. Applying the above theory of foreseeability

¹³¹. See *id.* at 288-89.

ty, one must ask whether at the time Seaway placed its advertisement in the Connecticut newspaper, it could have foreseen the advertisement's resulting in factual circumstances similar to those that gave rise to this lawsuit. If Seaway purposefully advertised in a Connecticut newspaper in order to solicit sales of its vehicles to Connecticut residents, it would have been foreseeable that a Connecticut resident would see the advertisement, travel to New York to purchase a vehicle and get into an accident due to an alleged defect in the vehicle. Thus, under this theory of foreseeability, Seaway's contact with Connecticut (the advertisement) would be a relevant factor in the determination of whether Seaway should be subject to specific jurisdiction in Connecticut. The fact that the accident occurred in Oklahoma, rather than a more likely venue such as Connecticut or New York, is irrelevant because we are only considering whether the cause of action was a foreseeable factual result of the defendant's contacts with Connecticut.

A more difficult foreseeability question arises when one considers the hybrid-jurisdiction scenario. To illustrate the hybrid situation, we may consider whether it is fair to hail Audi and Volkswagen into an Oklahoma court for the Robinsons' cause of action.¹³² Under the foreseeability criteria suggested in this Article, one must ask: Could Audi and Volkswagen have foreseen their forum conduct resulting in factual circumstances similar to those that gave rise to the Robinsons' lawsuit? Audi and Volkswagen could certainly have foreseen being hailed into an Oklahoma forum for some causes of action because they purposefully availed themselves of the Oklahoma market and profited from sales to Oklahoma citizens. More specifically, when Audi and Volkswagen decided to distribute their vehicles in Oklahoma, they could have foreseen being hailed into an Oklahoma court for an allegedly defective product that they sold in Oklahoma. This was a foreseeable risk, and thus they had the ability to calculate the cost of such jurisdictional exposure and incorporate that cost into their operational expenses.¹³³

¹³² For this analysis it does not matter whether we assume the plaintiffs purchased their vehicle in Connecticut or New York. Because the plaintiffs did not purchase the vehicle in Oklahoma, their cause of action is not causally related to Audi's and Volkswagen's contacts with Oklahoma.

¹³³ See *World-Wide Volkswagen*, 444 U.S. at 297. The cost of the jurisdictional exposure may be the cost of additional insurance or it may be the cost of the additional burden of litigating a case in a distant forum. See *Phillips Petroleum v. Shutts*, 472 U.S. 797, 808 (1985).

If this is so, is it unreasonable or unfair to subject the defendants to jurisdiction in Oklahoma for the Robinsons' Oklahoma accident? Under the particular facts of the case, it would not seem unfair to subject Audi and Volkswagen to jurisdiction for the Robinsons' accident. The type of claim brought by the Robinsons—a product liability suit resulting from an allegedly defective automobile—was foreseeable. The Robinsons's accident is very similar to one that could have arisen out of the defendants' contacts with Oklahoma—it involved the same type of product that the defendants voluntarily sell in the forum. Moreover, there is no evidence that the Robinsons' damages are any more significant than those that might have resulted from the same product if it had been sold within the forum. Thus, because the defendants could have foreseen being haled into this forum for this type of claim, the exercise of jurisdiction over Audi and Volkswagen would not violate the primary purpose of the minimum contacts doctrine—to protect the defendant from the burden of litigating a dispute in an unforeseeable and unfair jurisdiction.

ii. The State's Legitimate Interest

Although the primary function of the specific jurisdiction doctrine is to protect the defendant from unfair exercises of jurisdiction, the doctrine also—perhaps secondarily—limits the reach of state court jurisdiction to those disputes that legitimately impact the state. To the extent that specific jurisdiction is limited to claims that are proximately caused by the defendant's forum contacts, the nexus requirement serves to accomplish this goal. This Article asserts, however, that the existence of a causal relationship between the plaintiff's claim and the defendant's contacts is not the only instance in which a state will have a legitimate interest in adjudicating a dispute. As long as a legitimate state interest is shown, jurisdiction should not be rejected merely because the defendant's forum contacts are not the proximate cause of the plaintiff's claim.

Again, the facts in *World-Wide Volkswagen* illustrate the importance of the forum state's interests. In *World-Wide Volkswagen*, the state's interest was apparent because the Robinsons were injured while driving an allegedly defective vehicle on Oklahoma roads.¹³⁴ The state has a strong interest in keeping its roadways and drivers safe, and thus litigating disputes arising from accidents

¹³⁴ See *World-Wide Volkswagen*, 444 U.S. at 288.

on those roadways. The forum was intimately involved with the dispute, and was not excessively infringing on the sovereignty of its sister states. Denying jurisdiction would have contravened such interests of the forum state.

iii. Other Considerations

In *Burger King*, the Court stated that once it is shown that a defendant has minimum contacts with the forum, additional factors may be considered in determining whether the exercise of jurisdiction is consistent with "fair play and substantial justice."¹³⁵ These factors include:

"[T]he burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies."¹³⁶

¹³⁵. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (quoting *World-Wide Volkswagen*, 444 U.S. at 293).

¹³⁶. *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

To some extent, the existence of minimum contacts ensures that the state has a legitimate interest in adjudicating the dispute. Thus, the second factor (the forum state's interest in adjudicating the dispute) apparently allows the court to consider the extent of the state's interest relative to other potential forums.

The additional factors give the court the flexibility to consider practical litigation issues, such as the availability of witnesses and evidence in the forum, the expense of adjudicating the dispute in the forum as opposed to elsewhere, the law that will be applied in the forum, and convenience. See FRIEDENTHAL ET AL., CIVIL PROCEDURE § 3.10, at 129-30 (2d ed. 1993) (suggesting that a court may consider forum convenience and the economic burden faced by the litigants). However, in many instances these factors will "be accommodated through means short of finding jurisdiction unconstitutional." *Burger King*, 471 U.S. at 477.

Although the Court has never addressed how the relative economic position of the parties may play into the jurisdictional equation, if at all, Professor Arthur von Mehren suggests that a comparison of the "[p]arties [r]elative [a]bilities to [b]ear [l]itigational [b]urdens" should be considered. See Arthur von Mehren, *Adjudicatory Jurisdiction: General Theories Compared and Evaluated*, 63 B.U. L. REV. 279, 313 (1983). Professor von Mehren asserts:

[A] party's economic and psychological ability to litigate in the other party's forum, as well as his expectations with respect to the possibility that he may have to do so, decrease as a direct function of the degree to which his normal activities are localized and have only local effects.

Id. at 314. In addition to the degree to which the party's normal activities are localized or multistate, relative ability to bear litigation burdens may depend upon whether one or

These "additional factors" must be considered *in conjunction with* the defendant's minimum contacts, not *instead of* minimum contacts.¹³⁷ Although hybrid jurisdiction does not satisfy the traditional minimum contacts test because the defendant's forum contacts are not causally related to the plaintiff's claim, this Article asserts that the additional factors mentioned by the Court in *Burger King* are relevant to the jurisdictional equation if it can be shown that:

1. at the time the defendant purposefully contacted the forum the defendant could have foreseen its contact resulting in factual circumstances similar to those that gave rise to the plaintiff's claim; and
2. the state has a legitimate interest in adjudicating the dispute.

Continuing the *World-Wide Volkswagen* analysis, because (1) Audi and Volkswagen could have foreseen their Oklahoma contacts giving rise to factual circumstances similar to those that caused the plaintiff's cause of action, and (2) Oklahoma had a legitimate interest in adjudicating the dispute, the Court would have to consider whether the exercise of jurisdiction would be fair in light of the additional factors mentioned in *Burger King*.¹³⁸ In the *World-Wide Volkswagen* case, the plaintiffs had an interest in adjudicating the dispute where they were present and convalescing. Moreover, the burden on the defendants was not great in relation to the financial benefit that they gained from conducting business in the forum. Additionally, Oklahoma was a convenient and efficient location to adjudicate a case involving the Robinsons' accident because the percipient witnesses, police officers, treating physicians, and automobile mechanics who may have investigated or repaired the vehicle were located in Oklahoma. Additionally, some of the physical evidence, including the vehicle, the situs of the accident, and reports made immediately after the accident were available in Oklahoma. Although Audi's design and manufacturing evidence was located outside of the forum, it was subject to discovery pursuant

both of the parties is involved in a profit-making, commercial activity. *See id.* at 314, 320. Professor von Mehren does not suggest that courts should consider the financial wherewithal of the particular parties involved in the pending dispute. Rather, he suggests that courts should consider the relative ability of the *class* of plaintiffs or defendants to which the parties belong. *See id.* at 313.

^{137.} *See Burger King*, 471 U.S. at 477 (citations omitted).

^{138.} *See supra* note 136 and accompanying text.

to Fed. R. Civ. P. 30, 33, and 34. Finally, it is likely that Oklahoma law would have applied to the controversy because that is where the accident occurred. Thus, although the claim against Audi and Volkswagen did not proximately result from the defendant's contacts in Oklahoma, the purposes and goals of the specific jurisdiction doctrine were satisfied and the exercise of hybrid jurisdiction was consistent with fair play and substantial justice.

IV. APPLICATION OF THE PROPOSED HYBRID JURISDICTION ANALYSIS

Hybrid jurisdiction provisions typically allow a forum state to exercise jurisdiction when a defendant "derives substantial revenue from goods used or consumed" in the forum, "regularly does or solicits business" in the forum, or engages in a "persistent course of conduct" in the forum.¹³⁹ The following section will consider each of these types of conduct under the proposed framework.

A. A Defendant Who "Derives Substantial Revenue from Goods Used or Consumed" in the Forum: Stream of Commerce Cases

There are two types of stream-of-commerce cases that invoke notions of hybrid jurisdiction. Both of these types of cases involve defendants who derive substantial revenue from goods used or consumed in the forum. First, there is the *Asahi* scenario: A defendant places its product into the stream of commerce knowing that the product is likely to enter the forum state through the efforts of other entities in the chain of distribution.¹⁴⁰ The product enters the forum state, is purchased by a consumer there, and causes injury in the state. In *Asahi*, Justice O'Connor—and three other justices—wrote that merely placing a product into the stream of commerce knowing that the product would indirectly reach the forum state is not sufficient alone to create a purposeful contact with the forum.¹⁴¹ In addition to such indirect contacts, these justices wrote that a court considering the purposefulness of the defendant's relationship with the forum should consider other contacts with the forum, even if they are unrelated to the plaintiff's cause of action.¹⁴² To the extent that Justice O'Connor's analysis

¹³⁹ See *supra* note 11 and accompanying text (quoting a typical long-arm statute).

¹⁴⁰ See *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987).

¹⁴¹ See *id.* at 112.

¹⁴² Justice Stevens wrote a separate concurring opinion in which he disagreed with Justice O'Connor's purposeful availment analysis. See *id.* at 122. Nonetheless, he apparent-

considers contacts that would be irrelevant in a traditional specific jurisdiction analysis (because they are unrelated to the plaintiff's claim), she apparently endorses hybrid jurisdiction.

The second type of stream of commerce case involving hybrid jurisdiction is the *World-Wide Volkswagen* scenario: A defendant places its product into the stream of commerce with the knowledge that it will be carried by other entities in the distribution chain into many states. A plaintiff purchases the product in one of these states, brings the product to the forum state (a state in which the defendant's product is also sold), and the product causes injury in the forum. In this instance, courts must decide not only whether the defendant's indirect contacts with the forum are sufficiently purposeful to satisfy specific jurisdiction, but the court must also decide whether jurisdiction may be based upon the defendant's contacts with the forum state even though there is no causal link between the forum contacts and the plaintiff's claim. This section of the Article will apply the proposed hybrid jurisdiction analysis to these two types of stream of commerce cases.

1. *Asahi* Scenario

The first type of stream of commerce case involves a plaintiff who purchases the product through normal distribution channels in the forum state and the product causes injury in the forum. It is important to recognize that in this type of case there is a connection between the defendant's forum contacts and the claim. If one

ly endorsed the notion that a defendant's forum contacts that are unrelated to the plaintiff's cause of action may be relevant in a stream of commerce analysis. *See id.* Specifically, Justice Stevens wrote that a court should consider "the volume, the value, and the hazardous character of the [product]" in deciding whether the defendant purposefully availed itself of the forum market. *Id.* at 122. Allowing courts to consider the volume of products sold in the forum would allow courts to base their jurisdictional analysis on sales other than the sale(s) that gave rise to the plaintiff's cause of action.

Justice Brennan also wrote a separate concurring opinion in which he disagreed with Justice O'Connor's purposeful availment analysis. He noted that:

[A]s long as a participant in [the stream of commerce] is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State and indirectly benefits from the State's laws that regulate and facilitate commercial activity.

Id. at 117.

Thus, Justice Brennan did not believe it was necessary to consider a defendant's additional, unrelated contact with the forum.

applies Justice Brennan's analysis from *Asahi*—that placing a product into the stream of commerce knowing that the product will indirectly reach the forum creates a purposeful contact with the forum—then this case will fit the traditional specific jurisdiction model, and there is no need to resort to hybrid jurisdiction. If, on the other hand, one applies Justice O'Connor's "stream of commerce plus"¹⁴³ theory, jurisdiction will depend upon the defendant's contacts with the forum that are unrelated to the plaintiff's claim, thus relying upon a notion of hybrid jurisdiction. An example of this type of hybrid case is *Heins v. Wilhelm Loh Wetzler Optical Machinery*.¹⁴⁴

In *Wilhelm*, an employee of a Massachusetts corporation brought suit against a West German corporation alleging that the defendant negligently designed and manufactured an optical lens grinding machine purchased by the plaintiff's employer.¹⁴⁵ The plaintiff alleged that he was injured by the machine while setting it up in Sturbridge, Massachusetts.¹⁴⁶ The plaintiff filed his complaint in Massachusetts state court, and the defendant moved to dismiss for lack of personal jurisdiction.¹⁴⁷

The chain of distribution for the defendant's products was as follows: The defendant sold its products outright to a Swiss corporation, and the Swiss corporation then sold the defendant's products to an Illinois corporation who served as the exclusive distributor of defendant's products in the United States.¹⁴⁸ The defendant maintained no control over the marketing, price, or sales of its products in the United States.¹⁴⁹ The particular machine at issue in the case was purchased by the plaintiff's employer after negotiating with the Illinois distributor, and the machine was delivered to Sturbridge, Massachusetts.¹⁵⁰ The defendant's only direct contact to Massachusetts was that during the seven year period from 1977-1983 it sent an employee to visit Massachusetts on eight separate

^{143.} See *id.* at 756.

^{144.} 522 N.E.2d 989 (Mass. App. Ct. 1988).

^{145.} See *id.* at 990.

^{146.} See *id.*

^{147.} See *id.*

^{148.} See *id.* at 991-92.

^{149.} See *id.* Moreover, the defendant did not advertise or employ agents in the United States, it did not pay federal or Massachusetts income taxes, it owned no property in Massachusetts, it was not registered to do business in Massachusetts, and it had no banking relations in Massachusetts. See *id.* at 992 n.1.

^{150.} See *id.* at 992.

occasions, with the purpose of discussing the defendant's products and/or attempt to solicit sales.¹⁵¹ It appears that during none of these visits did the defendant's employee visit the plaintiff's employer.¹⁵²

The *Wilhelm* court held that the exercise of jurisdiction over the West German corporation satisfied the Massachusetts long-arm statute and the minimum contacts test.¹⁵³ Applying the hybrid jurisdiction provision of the Massachusetts long-arm statute, the court held that the first requirement of the provision was satisfied because the plaintiff's complaint alleged that the defendant caused a tortious injury in Massachusetts due to its negligent design and manufacture of the grinding machine in West Germany.¹⁵⁴ Additionally, the court held that the defendant satisfied the second requirement of the hybrid provision because it derived substantial revenue from goods used in Massachusetts.¹⁵⁵

The court also held that the exercise of jurisdiction over the defendant satisfied the Due Process Clause. Considering the defendant's contacts with Massachusetts "cumulatively," the court held that the minimum contacts test was satisfied because (1) the defendant was aware that its products had been purchased by Massachusetts customers; (2) the sale of the machine at issue was not an isolated occurrence but rather the plaintiff's employer had purchased at least three or four other machines from the defendant and there were "dozens" of the machines at another Massachusetts plant; and (3) the defendant's employees visited other Massachusetts companies to provide advice or solicit sales of the defendant's products.¹⁵⁶ Finally, the court held that the exercise of jurisdiction in this case would not be unduly burdensome or unfair to the defendant.¹⁵⁷

While the *Wilhelm* court's analysis is logical and persuasive, the court did not apply a traditional specific jurisdiction analysis. Under the traditional specific jurisdiction paradigm, only those contacts that arise out of or relate to the plaintiff's cause of action

^{151.} See *id.* at 993.

^{152.} See *id.*

^{153.} See *id.* at 997.

^{154.} See *id.* at 993.

^{155.} See *id.* The machine in question cost about \$56,000 and the plaintiff testified that he had seen "[d]ozens' of machines manufactured by the defendant" at another Massachusetts plant. *Id.*

^{156.} See *id.* at 996.

^{157.} See *id.* at 996-97.

should be relevant to the jurisdictional equation. Thus, the fact that the plaintiff's employer purchased other machines manufactured by the defendant, the fact that there were dozens of machines at other Massachusetts plants, and the fact that the defendant's employees visited other Massachusetts clients should be irrelevant to a traditional specific jurisdiction analysis. However, because these facts tend to show that the defendant purposefully created a relationship with Massachusetts, the court found them to be persuasive.

Rather than attempting to fit the *Wilhelm* case, and others like it, into the traditional specific jurisdiction paradigm, this Article suggests that any contacts that satisfy the underlying goals of specific jurisdiction should be considered relevant to the jurisdiction analysis, even if they are not causally related to the plaintiff's claim. In *Wilhelm*, the defendant placed its products into the stream of commerce with the knowledge that the products would be distributed—albeit beyond its direct control—in Massachusetts. Thus, the defendant derived substantial revenue from goods sold in Massachusetts. Moreover, the plaintiff's cause of action arises out of the purchase of defendant's product in Massachusetts. Thus, the nexus requirement is satisfied.

In light of Justice O'Connor's opinion in *Asahi*, however, it is uncertain if this type of indirect contact is sufficient alone to satisfy the purposeful availment prong of the minimum contacts doctrine. In *Wilhelm*, the defendant had additional direct contacts similar to those described by Justice O'Connor: the defendant sent its employees to Massachusetts to give advice about its products and solicit sales of its machines.¹⁵⁸ As a result of these contacts, the defendant could have foreseen being haled into court in Massachusetts for a cause of action arising out of a sale that resulted from its direct solicitation in the state. If the plaintiff's claim is similar to one that could have arisen from the defendant's contacts with the forum (i.e. if the contacts related to products that are similar to the one that caused the plaintiff's cause of action), it would not seem unfair to subject the defendant to jurisdiction in this forum where it has created purposeful contacts and reaped financial benefits.

The other goals of the specific jurisdiction doctrine are also satisfied in this case. The State of Massachusetts has a legitimate interest in adjudicating the case because it involves an injury that

¹⁵⁸. See *id.* at 996.

occurred within the state. Additionally, the plaintiff is an individual who resides in the forum state and has been injured there; thus, he has a strong interest in adjudicating the case in Massachusetts. The burden on the defendant would not be excessive in light of the international nature of its business and the financial benefits it derives from the forum. Finally, percipient witnesses, medical witnesses, and some of the evidence relating to the purchase of the machine would likely be present in Massachusetts. Thus, jurisdiction should be considered consistent with the Due Process Clause even though the traditional specific jurisdiction analysis is not satisfied.

2. *World-Wide Volkswagen* Scenario

As to the second type of stream of commerce case, in *Vermeulen v. Renault, U.S.A., Inc.*,¹⁵⁹ the Eleventh Circuit wrestled with a case that resembled the facts of *World-Wide Volkswagen*. In *Vermeulen*, the plaintiff purchased a used Renault vehicle from her brother.¹⁶⁰ At the time of the purchase, she and her brother resided in North Carolina, but shortly after purchasing the vehicle, the plaintiff moved to Georgia.¹⁶¹ While residing in Georgia, she was involved in a serious automobile accident on Georgia State Route 316 which rendered her quadriplegic.¹⁶² She filed suit in Georgia state court against several defendants, including RNUR ("Renault"), the French manufacturer and designer of the vehicle she was driving at the time of the accident.¹⁶³ The complaint alleged that her injuries were caused by the negligent manufacture and design of the car's passenger restraint system.¹⁶⁴ The defendants removed the case to federal court, and Renault moved to dismiss the case for lack of personal jurisdiction.¹⁶⁵

In analyzing whether jurisdiction was appropriate over Renault, the Eleventh Circuit spent considerable time describing the relationship between Renault and its distributors under their distribution agreement.¹⁶⁶ Pursuant to the distribution agreement, AMSC pur-

^{159.} 975 F.2d 746 (11th Cir. 1992).

^{160.} *See id.* at 748.

^{161.} *See id.*

^{162.} *See id.*

^{163.} *See id.*

^{164.} *See id.*

^{165.} *Id.*

^{166.} *See id.* at 749-53. In summary, the distribution agreement provided that AMSC would be responsible for marketing and distributing Renault vehicles in the United States,

chased Renault vehicles in France and exported them to the United States.¹⁶⁷ AMSC was solely responsible for deciding where in the United States to send the vehicles.¹⁶⁸ Representatives from Renault and AMSC met on several occasions and engaged in frequent telephone conversations to exchange ideas regarding "volume forecasts, monthly projections for orders, changes in vehicle specifications and marketing strategies."¹⁶⁹ These conversations resulted in product modifications to suit the United States market.¹⁷⁰ There was no evidence that Renault representatives visited any of the six Renault dealerships in Georgia, directed any advertising specifically toward Georgia, or modified any product to fit the Georgia market particularly.¹⁷¹

Applying these facts to the jurisdictional issue, the court summarily addressed the Georgia long-arm statute and focused its attention on the Due Process analysis.¹⁷² Applying Justice O'Connor's "stream of commerce plus" analysis,¹⁷³ the court held that Renault maintained a distribution network by which its cars were brought to Georgia, it designed its product for the American market (including Georgia), it advertised the product in Georgia,

but Renault would be involved in decisions "affecting the sales of its product." *Id.* at 749. Renault and AMSC jointly created a Marketing Representative Plan that AMSC agreed to carry out. *See id.* Although AMSC was responsible for advertising, promoting, and merchandising Renault products in the United States, AMSC agreed to "work closely with Renault in the planning and developing of themes and strategy and the related budget." *Id.* at 750. AMSC agreed to discontinue any advertising that Renault believed to be injurious to its business. *See id.* Renault agreed to hold harmless and indemnify AMSC against any judgment resulting from lawsuits against AMSC for design or other defects in Renault products and AMSC agreed to allow Renault to take over the defense of any such lawsuit if Renault chose to do so. *See id.* Finally, the agreement required AMSC to provide Renault on a regular basis with reports and records pertaining to the distribution of Renault products. *See id.* at 750-51.

¹⁶⁷ *See id.* at 752.

¹⁶⁸ *See id.*

¹⁶⁹ *Id.*

¹⁷⁰ *See id.*

¹⁷¹ *See id.*

¹⁷² *See id.* at 753. Noting that the courts of Georgia construe the Georgia long-arm statute to confer jurisdiction to the maximum extent permitted by the Due Process Clause, the court did not specifically analyze the applicability of the long-arm statute. However, the court stated that all parties agreed that the relevant long-arm provision was § 9-10-91(3), which confers jurisdiction over a cause of action arising out of a "tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state" *Id.* at 753 n.13.

¹⁷³ *Id.* at 756.

and it established channels for customers to seek advice concerning the product in Georgia.¹⁷⁴ The court held that these contacts were "sufficiently related to [plaintiff's] cause of action to confer specific jurisdiction" because Renault's "activities in Georgia were inextricable links in the advertising and distribution network by which the appellant obtained her vehicle" and "[m]ore importantly, [Renault] directly targeted its [product] toward Georgia, and thus could expect to defend in Georgia the very type of action this case presents."¹⁷⁵ Finally, the court concluded that the exercise of jurisdiction in this case would not offend fair play and substantial justice.¹⁷⁶

The *Vermeulen* court's analysis is well-reasoned and intriguing. It is not, however, a traditional specific jurisdiction analysis. Under a traditional analysis, the court would have had to reject jurisdiction because, regardless of whether the defendant's indirect contacts with Georgia could be considered purposeful, the plaintiff's cause of action does not arise out of Renault's Georgia contacts. She purchased her car in North Carolina, not Georgia. Moreover, she bought the car second hand from her brother, not from Renault, its distributor, or a Georgia dealer. Notwithstanding the court's conclusory statement that Renault's Georgia contacts were "inextricable links" in the network by which the appellant obtained her vehicle, there is no evidence of a causal link between the defendant's contacts with Georgia and the plaintiff's cause of action.

But rather than rejecting the *Vermeulen* court's grant of jurisdiction because the facts do not satisfy the traditional doctrine, and rather than bootstrapping the analysis to fit the doctrine, we should instead determine if the exercise of jurisdiction supports the constitutional purposes of specific jurisdiction. As noted previously, the primary purpose of the minimum contacts doctrine is to provide the defendant with an opportunity to foresee where its conduct will subject it to jurisdiction and thus protect the defendant from being unfairly hailed into a distant and unexpected forum. In the

¹⁷⁴. See *id.* There was no evidence that the plaintiff's claim was causally related to these contacts. She did not purchase the vehicle from Renault, AMSC, or a dealer in Georgia, she did not purchase the vehicle as a result of Georgia advertisements, and, as far as the facts tell us, she did not seek advice or service from Georgia dealers. See *id.* at 748.

¹⁷⁵. *Id.* at 760.

¹⁷⁶. See *id.* at 762.

Vermeulen case, we must consider whether Renault's contacts with Georgia were such that it would be fair to subject it to suit in Georgia for the plaintiff's lawsuit.

So long as Renault could have foreseen its forum contacts resulting in factual circumstances that are similar to the factual circumstances that gave rise to the plaintiff's claim, jurisdiction is fair to the defendant. As in *World-Wide Volkswagen*, Renault had several forum contacts from which it could have foreseen being haled into a Georgia forum for a car sold to a consumer in Georgia.¹⁷⁷ Because the facts that gave rise to the plaintiff's cause of action are extremely similar to facts that could have arisen from these contracts, it does not seem unfair to subject Renault to jurisdiction in Georgia.¹⁷⁸

The secondary purpose of the specific jurisdiction doctrine is to ensure that the forum has a legitimate interest in adjudicating the dispute. In *Vermeulen*, Georgia has a compelling interest in protecting its residents from unsafe products and ensuring the safety of its roads and highways. The accident that caused the plaintiff's injury occurred on a Georgia State highway, and thus Georgia is not infringing on a sister state's sovereignty by adjudicating the dispute. Therefore, the exercise of jurisdiction satisfies the primary and secondary goals of specific jurisdiction.

The additional factors noted by the Court in *Burger King* also indicate that the exercise of jurisdiction over Renault is appropriate.¹⁷⁹ The plaintiff is an individual who resides in Georgia and

¹⁷⁷ See *supra* note 174 and accompanying text.

¹⁷⁸ The *Vermeulen* court noted that the plaintiff's vehicle was a Renault LeCar, and the defendant's contacts with Georgia related to the distribution, marketing, and advertising of Renault LeCar. One may consider whether the jurisdictional result would have been different if the plaintiff had purchased a Renault LeCar from her brother, but the defendant's contacts with Georgia related to the sale of a different product, such as lawn mowers or farm equipment. This article asserts that the foreseeable consequences of selling lawn mowers or farm equipment would not be sufficiently similar to the consequences that gave rise to the plaintiff's claim to satisfy the constitutional purpose of specific jurisdiction.

A more difficult foreseeability question arises if the products are not identical but are fairly similar. For example, what if the defendant's contacts related to the sale of pickup trucks instead of LeCar vehicles? In this instance, the court would have to consider the foreseeable uses of the pickup truck and consequences that might arise from those uses in comparison with the uses of LeCar and the consequences that actually caused the plaintiff's cause of action. Additionally, the court might consider the passenger restraint systems in both types of vehicles to determine if they would give rise to similar accidents.

¹⁷⁹ See *supra* note 136 and accompanying text (listing those factors).

who became crippled as a result of the accident at issue in the suit. There is no evidence that she is forum-shopping in choosing the Georgia court. Additionally, the defendant is a large multinational corporation involved in international trade which has earned substantial profit from Georgia citizens. Based on these facts, it does not appear unfair to require the defendant to defend itself in Georgia for the plaintiff's claims. In fact, as noted by the Eleventh Circuit, Renault agreed to undertake the defense of actions alleging defects in Renault products.¹⁸⁰ Finally, much of the evidence relating to the accident, the vehicle, and the plaintiff's recovery is present in Georgia. Thus, the additional factors espoused by the court in *Burger King* indicate that the exercise of jurisdiction is consistent with fair play and justice.

The *Vermeulen* and *Wilhelm* cases illustrate that even though some stream of commerce cases may not satisfy the traditional specific jurisdiction doctrine, the exercise of jurisdiction may nonetheless satisfy the underlying constitutional purposes of the doctrine. This Article suggests that jurisdiction under a hybrid theory is constitutionally permitted in such instances.

B. A Defendant Who "Regularly Does or Solicits Business" in the Forum

Although stream of commerce cases frequently present compelling arguments for the exercise of hybrid jurisdiction, the hybrid long-arm provisions at issue in this Article also extend jurisdiction to other factual scenarios. For example, most long-arm statutes confer hybrid jurisdiction over a defendant who causes tortious injury in the forum if the defendant also "regularly does or solicits business" in the forum.¹⁸¹ The courts in the following cases considered whether the defendant's regular solicitation of business was sufficient to justify the exercise of jurisdiction. In both of the cases, the courts relied upon general jurisdiction to justify the exercise of jurisdiction over a claim that did not arise out of the defendant's forum contacts. In light of the Supreme Court's general jurisdiction cases and the views of general jurisdiction espoused by commentators, general jurisdiction was not appropriate in either case.¹⁸² This Article asserts that a more appropriate analysis

^{180.} See *Vermeulen*, 975 F.2d at 761.

^{181.} See *supra* note 11 and accompanying text.

^{182.} See *supra* Part II.

would have been to determine if the exercise of jurisdiction over the defendants in each case satisfied the goals of the specific jurisdiction doctrine.

In *Northlake Cardiology Associates, Inc. v. Alpha Gulf Coast, Inc.*,¹⁸³ plaintiffs filed suit in Louisiana state court against several defendants, including Bayou Caddy's Jubilee Casino ("Jubilee Casino"), a casino located in Mississippi.¹⁸⁴ The plaintiffs were healthcare providers who rendered services to participants in defendant's health insurance plan. They brought suit pursuant to the Employee Retirement Income Security Act ("ERISA"), seeking payment of health insurance benefits from the defendant's health plan.¹⁸⁵ Defendants removed the action to federal court and moved to dismiss on various grounds, including lack of personal jurisdiction.¹⁸⁶

In considering whether Jubilee Casino was subject to personal jurisdiction in Louisiana, the court held that the exercise of jurisdiction over the Casino satisfied the Louisiana long-arm statute¹⁸⁷ because the defendant caused tortious injury in Louisiana and it "regularly . . . solicit[ed] business" in the forum.¹⁸⁸

The court reached this conclusion based upon an allegation in the complaint which stated that Jubilee Casino placed billboards along the interstate highway in Louisiana near the Mississippi border seeking to attract patrons from Louisiana.¹⁸⁹ The court also held that the exercise of jurisdiction did not violate the Due Process Clause.¹⁹⁰ Recognizing that the cause of action did not arise out of the defendant's Louisiana contacts, the court held that Jubilee Casino's "continuous and systematic" contacts with Louisiana—the billboards along the interstate highway—were sufficient to confer general jurisdiction.¹⁹¹

¹⁸³ No. 95-2511, 1995 U.S. Dist. LEXIS 18640 (E.D. La.).

¹⁸⁴ The casino was owned by Alpha Gulf Coast, Inc. *See id.* at *5.

¹⁸⁵ *See id.* at *1-*2.

¹⁸⁶ *See id.* at *2-*3.

¹⁸⁷ The court applied LA. REV. STAT. ANN. § 13:3201(a)(4) (West 1991), which provides for jurisdiction over a nonresident who causes "[i]njury in this state by an offense or quasi-offense committed through an act or omission outside of this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives revenue from goods used or consumed or services rendered in this state." *Northlake*, 1995 U.S. Dist. LEXIS 18640, at *7.

¹⁸⁸ *Northlake*, 1995 U.S. Dist. LEXIS 18640, at *8.

¹⁸⁹ *See id.* at *7-*8.

¹⁹⁰ *See id.* at *11-*12.

¹⁹¹ *See id.* at *8, *11-*12.

Although the Supreme Court has not clearly defined the contours of the general jurisdiction doctrine, it is doubtful that the Court would find placing billboards along an interstate highway sufficient to confer general jurisdiction over the casino in this case. For example, in rejecting general jurisdiction over the defendant in the *Helicopteros* case, the Supreme Court set a very high threshold for the exercise of dispute-blind jurisdiction.¹⁹² The *Northlake* court summarily concluded that placing a billboard along the interstate highway in the forum is sufficient to confer general jurisdiction, without even considering the amount of revenue earned from Louisiana residents.¹⁹³ Even if one considers the general jurisdiction theories espoused by Professors Twitchell and Brilmayer, Jubilee Casino's contacts with Louisiana are not such that it should consider itself "an insider" for purposes of personal jurisdiction.¹⁹⁴ It did not conduct intrastate business in Louisiana, it did not have a physical location in Louisiana, and it did not have the opportunity to affect the laws in Louisiana. Thus, the facts in *Northlake* do not appear to satisfy the standards for general jurisdiction.

Moreover, as noted by the *Northlake* court, the facts of the case do not satisfy the traditional specific jurisdiction doctrine because the cause of action does not arise out of the defendant's forum contacts.¹⁹⁵ Before we conclude that jurisdiction must have been unconstitutional, we must consider whether this hybrid jurisdiction case satisfies the purposes and goals of the specific jurisdiction doctrine.

In examining *Northlake*, we must consider whether the defendant could have foreseen its contacts with Louisiana resulting in factual circumstances similar to the facts that gave rise to the plaintiff's claim. When the defendant chose to place its billboards in Louisiana it was purposefully seeking to attract Louisiana resi-

¹⁹² See *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984). The defendant's contacts in *Helicopteros*, which included sending a corporate officer to the forum to negotiate a contract, purchasing four million dollars worth of helicopters and equipment in the forum over an eight year period of time, sending employees for training in the forum and accepting Texas checks, were not sufficient to confer general jurisdiction. See *id.* at 410-11, 417.

¹⁹³ The court did state: "It is reasonable to believe that the Bayou Caddy's Jubilee Casino derives revenue from persons crossing the border to frequent the casino." *Northlake*, 1995 U.S. Dist. LEXIS 18640, at *11. However, the court failed to examine how much revenue the casino received from that source.

¹⁹⁴ See *supra* notes 42-56 and accompanying text.

¹⁹⁵ See *Northlake*, 1995 U.S. Dist. LEXIS 18640, at *7.

dents to its casino. It could have foreseen being sued in a Louisiana court as a result of a resident's activities at its casino, when attendance at the casino was induced by the billboard. Arguably, one could assert that jurisdiction would be fair to the defendant if a claim was brought by a Louisiana resident who went to the casino without having seen the billboard but who had a claim that was similar to one that could have been brought by the solicited Louisiana resident.

Here, however, the plaintiff was not a customer at the casino, but rather was a medical provider who was owed money for services that it rendered to employees of the casino.¹⁹⁶ The facts that gave rise to Northlake's claim are not a foreseeable result of the casino's decision to place a billboard on the interstate highway in Louisiana. Thus, even though the Louisiana hybrid long-arm provision was satisfied, the exercise of hybrid jurisdiction in this case does not satisfy the primary constitutional purpose of specific jurisdiction. Having failed to adequately satisfy the requirements of general jurisdiction as well, the exercise of jurisdiction by the Louisiana court was unconstitutional.

In *Lemke v. St. Margaret Hospital*,¹⁹⁷ the court held that an Indiana doctor who solicited and treated Illinois residents in Indiana could be subjected to general jurisdiction in Illinois because he was "doing business" pursuant to Illinois law.¹⁹⁸

Shortly after the complaint was filed, the case was removed to federal court, and Dr. Patel moved to dismiss for lack of personal jurisdiction.¹⁹⁹ He argued that he should not be subject to Illinois jurisdiction because he was a citizen and resident of Indiana, he was licensed to practice medicine only in Indiana, and he treated the plaintiff's son in Indiana.²⁰⁰ The court rejected the doctor's arguments and held that there was a state statutory basis for jurisdiction because St. Margaret Hospital acted as Dr. Patel's agent in regularly and continuously soliciting Illinois patients to be treated by Dr. Patel in Indiana.²⁰¹ In fact, the plaintiff's son was treated

^{196.} See *id.* at *2.

^{197.} 552 F. Supp. 833 (N.D. Ill. 1982).

^{198.} Although the Illinois long-arm statute does not include a hybrid jurisdiction provision, see ILL. COMP. STAT. 110/2-209 (West 1985), such a provision would have been applicable to the facts of this case. The factual history of *Lemke* was presented in the Introduction section of this Article. See *supra* notes 1-9 and accompanying text.

^{199.} See *Lemke*, 522 F. Supp. at 835.

^{200.} See *id.*

^{201.} See *id.* at 838.

by Dr. Patel on the hospital's referral.²⁰²

With regard to the Due Process Clause, the court held that the defendant had regular and purposeful contacts with Illinois. Moreover, because a significant portion of the patients that Dr. Patel treated were Illinois residents, the court held that he could have foreseen being hailed into an Illinois court.²⁰³

As in all hybrid jurisdiction cases, the facts of the *Lemke* case do not satisfy the requirements for general or specific jurisdiction. Although the court held that the doctor was "doing business" under Illinois law,²⁰⁴ it is unlikely that the Supreme Court would find his contacts sufficient to confer general personal jurisdiction. As noted above, the Court in *Helicopteros* indicated that the threshold for general jurisdiction was quite high.²⁰⁵ Here, the defendant did not live in Illinois, he did not have a local office in Illinois, and he did not perform any services in Illinois. Although the court relied upon the fact that the hospital continuously solicited Illinois patients on his behalf,²⁰⁶ we do not know what quantity of his revenue came from Illinois patients. Thus, it does not seem that the defendant's contacts in this case are more significant than the contacts that the Court rejected in *Helicopteros*.²⁰⁷

Additionally, the traditional specific jurisdiction doctrine is not satisfied according to the facts elicited by the court. The court held that the defendant had purposeful contacts with Illinois—the hospital's active solicitation of Illinois patients which it referred to Dr. Patel—but it did not determine that this cause of action arose out of the contacts.²⁰⁸ Specifically, although Dr. Patel admitted that the plaintiff's son was referred to him by the hospital, the court did not determine whether Michael was taken to St. Margaret Hospital as a result of the hospital's efforts to solicit patients. Without this information, the specific jurisdiction analysis is incomplete.

One might reasonably question, however, whether Dr. Patel's jurisdictional exposure should depend upon the fortuity of why

²⁰² See *id.* at 836.

²⁰³ See *id.* at 839.

²⁰⁴ See *id.* at 838.

²⁰⁵ See *supra* note 192 and accompanying text.

²⁰⁶ See *Lemke*, 552 F. Supp. at 838.

²⁰⁷ See *supra* note 192. Even if one applies the tests espoused by Professors Twitchell and Brilmayer, the defendant in this case does not bear the characteristics of an Illinois insider.

²⁰⁸ See *Lemke*, 552 F. Supp. at 838.

Michael was brought to St. Margaret Hospital. One might argue that jurisdiction is no less fair to the doctor whether Michael went to St. Margaret Hospital as a result of reading their advertisement in the Illinois phone book than if he went there because the hospital happened to be the closest hospital to his high school. The traditional specific jurisdiction analysis, however, could turn on such a difference in facts.

If one analyzes the exercise of jurisdiction over Dr. Patel according to the purposes and goals of the specific jurisdiction doctrine, a logical result may be obtained. First, it would seem that if the hospital's activities in soliciting patients were attributable to Dr. Patel, he could have foreseen being hailed into Illinois for a cause of action arising out of the solicitation of an Illinois resident for whom he performed medical services. Because the plaintiff's case is extremely similar to one that could have arisen from these contacts, it does not seem unfair to subject the doctor to jurisdiction for this claim. Moreover, Illinois has a legitimate interest in adjudicating this case which concerns the death of an Illinois citizen, in Illinois, arising out of an accident that occurred in a school in Illinois. Additionally, the plaintiff has a strong interest in adjudicating the case in Illinois where the deceased's representative lives and where the estate is being settled. Much of the evidence concerning the accident at school and the medical care provided at the hospital in Chicago will be present in Illinois. Finally, the burden on the defendant would not be great in light of geographic proximity. Thus, the exercise of jurisdiction in this case arguably does not offend constitutional standards, and jurisdiction was properly granted.

C. A Defendant Who Engages in a "Persistent Course of Conduct" in the Forum

The third category of conduct included in most hybrid jurisdiction statutes confers jurisdiction over a defendant who causes tortious injury in the state by an act or omission outside of the state if he engages in a "persistent course of conduct" in the forum.²⁰⁹ The following cases illustrate how this provision has been interpreted.

²⁰⁹ See *supra* note 11 and accompanying text. This is the only category of conduct that is not limited to commercial contexts. Arguably, this language could extend to any person that has regular conduct with the forum, such as a person who regularly passes through a state to get to her job, a person who attends school in a state or even a person who visits family or friends in a state.

ed by several courts.

In *LaNuova D&B, S.p.A. v. Bowe Co., Inc.*,²¹⁰ tenants of a shopping center in Delaware brought suit in Delaware state court against the contractors and suppliers of Dibiten, a roofing material. The plaintiffs alleged that the defendant's improper application and/or manufacture of the Dibiten installed at the shopping center resulted in a fire which damaged their premises. The original defendants joined Bowe Co., Inc. ("Bowe"), the New Jersey distributor of the product, and Bowe sought to join LaNuova D&B, S.p.A. ("LaNuova"), the Italian manufacturer of the product.²¹¹ LaNuova moved to dismiss for lack of personal jurisdiction.²¹²

The Supreme Court of Delaware held that LaNuova was subject to personal jurisdiction under the hybrid provision of the Delaware long-arm statute, and that the exercise of jurisdiction would not violate the constitution.²¹³ Specifically, the court held that LaNuova allegedly caused a tortious injury in Delaware by an act or omission outside of the state—negligent manufacturing of the product—and that it engaged in a persistent course of conduct in Delaware by "establishing and implementing an insured warranty program for its product."²¹⁴ Pursuant to a manufacturer's warranty program, every purchaser of Dibiten was entitled to a warranty upon the completion of the installation of the product.²¹⁵ Although the manufacturer's warranty had not been issued or delivered at the time of the fire at issue in the primary case,²¹⁶ the court held that warranties that had been issued and delivered to other Delaware consumers amounted to a persistent presence in the forum by LaNuova.²¹⁷ Finally, the court held that the exercise of

²¹⁰. 513 A.2d 764 (Del. 1986).

²¹¹. See *id.* at 767.

²¹². See *id.* at 766.

²¹³. The Delaware long-arm statute extends jurisdiction over any person who, "[c]auses tortious injury in the State or outside of the State by an act or omission outside the State if he . . . engages in any other persistent course of conduct in the State." DEL. CODE ANN. tit. 10, § 3104(c)(4) (1974).

It is interesting to note that this statute is not limited to injuries caused in the state. In this respect it appears to confer a type of general jurisdiction over any tortious injuries caused by the defendant. Of course, to the extent that jurisdiction is limited to tortious injuries caused by out-of-state conduct, as opposed to other types of claims, the statute is not completely dispute-blind and thus would not be pure general jurisdiction.

²¹⁴. *LaNuova*, 513 A.2d at 769.

²¹⁵. LaNuova sent the warranties, signed in blank, to Bowe, and Bowe distributed the warranties to the ultimate consumer upon completion of the roofing job. See *id.*

²¹⁶. See *id.* at 768.

²¹⁷. See *id.* at 769.

jurisdiction over LaNuova would not violate the constitution because "the quality and nature of its warranty program provides the constitutionally required level of minimum contacts."²¹⁸

The Delaware Supreme Court did not specify whether it was applying general or specific jurisdiction over LaNuova. However, it appears that the facts of the case do not satisfy either doctrine. Specifically, in light of the Supreme Court's rejection of jurisdiction in *Helicopteros*, it is unlikely that the Court would agree that the extension of a manufacturer warranty to Delaware consumers would be sufficient to allow Delaware courts to hail in foreign defendants for dispute blind jurisdiction. If such a warranty program were sufficient to confer general jurisdiction, any manufacturer who included a warranty with its product would be subject to jurisdiction for any cause of action in any state where a consumer purchased, installed, or used the product. This appears to be a much broader interpretation of general jurisdiction than the Due Process Clause would allow.

Specific jurisdiction also fails. In this case the Delaware Supreme Court recognized that the plaintiff's cause of action did not arise out of the manufacturer's warranty because the fire occurred before the roofing job was completed, and the warranty had not yet been delivered. Thus, jurisdiction over LaNuova was unconstitutional unless, as suggested in this Article, the purposes and goals of the specific jurisdiction doctrine are satisfied.

Under the traditional doctrine, the warranties would be irrelevant to a specific jurisdiction analysis because they do not relate to the particular cause of action at issue in the case. This Article asserts that the warranties should be considered relevant to the jurisdictional analysis if such consideration satisfies the purposes and goals of the specific jurisdiction doctrine. Thus, one must first consider whether the defendant could have foreseen being hailed into a Delaware court as a consequence of its issuing manufacturer warranties to Delaware consumers. When the defendant decided to distribute its warranties to all consumers who purchased and installed its product, knowing that some of those consumers were located in Delaware, it could have foreseen being hailed into court for alleged breach of warranty by a consumer who received a warranty. Although the plaintiff in this case had not received the warranty at the time that the fire took place, this cause of action is

²¹⁸ *Id.* at 770.

extremely similar to one that could have arisen as a result of a warranty that was delivered in the state. Thus, it does not seem unfair to subject the defendant to jurisdiction for this type of suit.

Second, one must examine whether the forum has a legitimate interest in this case. All states seek to protect their citizens from defective goods that are sold, installed, and cause injury in the forum. Therefore, Delaware had a vital interest in maintaining jurisdiction.

Finally, many of the additional *Burger King* factors are satisfied in this case. For example, evidence relating to the purchase and installation of the product, the details of the fire, the damage caused by the fire, and medical testimony regarding treatment of victims will be present primarily in Delaware. Thus, although the warranties are unrelated to this plaintiff's cause of action, they serve the purposes and goals of the specific jurisdiction doctrine, and thus should justify the exercise of jurisdiction in this case.²¹⁹

While this Article suggests an expansion of jurisdiction beyond the strict confines of the specific jurisdiction paradigm as we know it, the suggested approach will not mark the demise of all restrictions on specific jurisdiction. For example, in *Magid v. Marcal Paper Mills*,²²⁰ the plaintiff, a citizen of Pennsylvania, brought suit in Delaware against his former employer Marcal Paper Mills, Inc. ("Marcal"), a citizen of New Jersey, for damages resulting from the termination of his employment in violation of the Age Discrimination in Employment Act.²²¹ In considering whether the defendant could be subjected to personal jurisdiction in Delaware, the court stated that the defendant's only contacts with the forum were that it "deliver[ed] a very small percentage of its products to one Delaware wholesaler, and supervis[ed] the sale of its products in stores in Delaware."²²² Applying the Delaware hybrid jurisdic-

²¹⁹ It is interesting to note that this case could have been treated as a stream of commerce case because the defendant placed its product into the stream of commerce with knowledge that it would be distributed indirectly throughout the United States. If the court had adopted Justice O'Connor's "stream of commerce plus" analysis, this would have been a purposeful contact only if the defendant also had other contacts with the forum indicating that it intended to create a relationship with the forum state. Here, the defendant's warranties to Delaware consumers serve as the necessary additional contact to persuade a court that the defendant has purposeful contact with the forum.

²²⁰ 517 F. Supp. 1125 (D. Del. 1981).

²²¹ See *id.* at 1127.

²²² *Id.* The defendant was not authorized to do business in Delaware, it did not ship goods to any warehouses or headquarters in Delaware, it did not station any employees in Delaware or have a telephone listing in Delaware. See *id.*

tion long-arm provision, the court held that the alleged breach of a noncontractual, statutory duty is an allegation of tortious injury.²²³ Additionally, the court held that Marcal had an ongoing relationship with the state due to its regular shipments of products into Delaware and its ongoing supervision of retail locations.²²⁴ Notwithstanding satisfaction of the long-arm statute, the court in *Magid* held that the exercise of jurisdiction over Marcal would violate the Due Process Clause of the Constitution.²²⁵ The court noted that although the defendant had ongoing, purposeful contacts with the forum state, the plaintiff's cause of action did not arise out of the company's sales activity in Delaware²²⁶ and Delaware had no palpable interest in adjudicating the dispute.²²⁷

As noted above, hybrid jurisdiction may be justified in factual situations where the purposes and goals of specific jurisdiction are satisfied, even though there is no causal relationship between the defendant's forum contacts and the plaintiff's cause of action. This was not the case, however, in *Magid*. The primary purpose of the minimum contacts doctrine is to protect the defendant from unfair exercises of jurisdiction by giving the defendant sufficient notice of the jurisdictional exposure caused by its forum activities to allow the defendant an opportunity to foresee the risk of being haled into court. In *Magid*, the defendant had no warehouse or headquarters in Delaware, and it stationed no employees in Delaware.²²⁸ Its only contact to the State of Delaware related to the limited distribution and supervision of the sale of its product in the state. As a result of these activities, the defendant could have foreseen being haled into a Delaware forum for a cause of action relating to the products it distributed there. It could not reasonably have foreseen that these contacts would subject it to jurisdiction for a wrongful termination claim by an employee who resided and worked for the defendant in Pennsylvania. If jurisdiction were

^{223.} See *id.*

^{224.} See *id.*

^{225.} See *id.* at 1131.

^{226.} See *id.* at 1127-28, 1131 (stating that although the plaintiff's job duties required him to visit Delaware and supervise some of the Delaware wholesale and retail accounts, the cause of action arose out of the plaintiff's relationship with the defendant and the decision to discharge the plaintiff which was made in New Jersey).

^{227.} Interestingly, the court noted that the plaintiff chose the Delaware forum because it was personally convenient to the plaintiff rather than to gain a procedural advantage. See *id.* at 1127-28.

^{228.} See *id.* at 1127.

allowed in this case, the defendant would have been exposed to jurisdiction by any of its employees in any jurisdiction where the employee facilitated the distribution or supervision of the sale of products. This would have been an unreasonable and unfair extension of the defendant's jurisdictional exposure. Thus, although the defendant could foresee being haled into a Delaware forum for some types of claims, the circumstances that gave rise to the plaintiff's claim were not a foreseeable result of the defendant's contacts with Delaware.

Moreover, the State of Delaware had no legitimate interest in adjudicating this dispute. The alleged wrongful conduct occurred in Pennsylvania to a Pennsylvania resident. Delaware's desire to exercise jurisdiction was only secondary at best. Because the purposes of specific jurisdiction were not satisfied in this case, a hybrid theory of jurisdiction would not save an otherwise unconstitutional exercise of jurisdiction.

V. CONCLUSION

This Article suggests that specific and general personal jurisdiction are two discrete categories of jurisdiction, not merely the endpoints on a sliding scale. Although many factual scenarios fall neatly within one of these two jurisdictional categories, there are scenarios where some of the characteristics of each type of jurisdiction are present, but neither type is independently satisfied. This Article suggests an analytical framework to determine the constitutionality of exercising jurisdiction in such hybrid cases.

Specific jurisdiction is the most appropriate vehicle to exercise jurisdiction in hybrid situations. Traditionally, a court considering the applicability of specific jurisdiction would determine whether the defendant had purposeful contacts with the forum that gave rise to (or at least related to) the plaintiff's cause of action. Contacts that are unrelated to the plaintiff's cause of action would be irrelevant under the traditional specific jurisdiction analysis. This Article asserts, however, that courts need not automatically exclude consideration of contacts that are not causally related to the plaintiff's claim, particularly where the defendant has significant contacts with the forum, as in the hybrid jurisdiction scenario. Rather, as long as the defendant's contacts with the forum satisfy the purposes and goals of the specific jurisdiction doctrine, they may be considered in the jurisdictional equation—regardless of whether they gave rise to the claim. The Article then determines that the purposes and

goals of the doctrine are two-fold: (1) to protect the defendant from unfair exercises of jurisdiction by providing the defendant with an opportunity to foresee where its conduct will expose it to jurisdiction, and (2) to provide each state with the power to reach out beyond its boundaries to adjudicate disputes that legitimately impact the state.

If these purposes are satisfied, jurisdiction is constitutionally permissible unless the defendant can show, through application of the additional considerations listed in *Burger King*, that the exercise of jurisdiction violates traditional notions of fair play and substantial justice. Therefore, although hybrid jurisdiction does not fit neatly into the present scheme of personal jurisdiction, it is not necessarily unconstitutional.