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Phillips Petroleum Company v. Shutts: Multistate Plaintiff Class Actions: A Definite Forum, but Is It Proper, 19 J. Marshall L. Rev. 483 (1986)

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*PHILLIPS PETROLEUM COMPANY v. SHUTTS:** MULTISTATE PLAINTIFF CLASS ACTIONS: A DEFINITE FORUM, BUT IS IT PROPER?

While a class action[1] is the most effective procedural device for resolving disputes of large numbers of people,[2] the use of the class action in nationwide class suits has been significantly hindered. Multistate class plaintiffs who cannot meet the amount in controversy requirement for federal diversity jurisdiction have been denied access to the federal courts.[3] Thus, a state court forum remains the

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* 105 S. Ct. 2965 (1985).

1. For a discussion of the history and purpose of class actions, see generally 7 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1751 (1972 & Supp. 1985).

2. The United States Supreme Court captured the essence of class actions when it stated:

> The aggregation of individual claims in the context of a class wide suit is an evolutionary response to the existence of injuries unremedied by the regulatory action of the government. Where it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class-action device.

Deposit Guaranty Nat'l Bank v. Roper, 445 U.S. 326, 339 (1980).

In many cases, where individual claims are small, class actions are not only the most effective procedural device available, but are the only procedural device available to the claimant. *See* Miner v. Gillette Co., 87 Ill. 2d 7, 428 N.E.2d 478 (1981) (court permitted class action where individual claims were worth only $7.95 because members had no other appropriate form of legal redress), *cert. dismissed*, 459 U.S. 86 (1982). *See also* Homburger, *State Class Actions and the Federal Rule*, 71 COLUM. L. REV. 609, 641 (1971) (class actions are often the only economically feasible means by which a large number of people with small but related claims can vindicate their rights).

3. The United States Supreme Court, in two recent decisions, has virtually closed the doors to the federal court system for multistate class actions that do not involve questions of federal law. In Snyder v. Harris, 394 U.S. 332 (1969), the plaintiff class claimed aggregate damages of $1,200,000 with the class representative individually claiming only $8,740 in damages. *Id.* at 333. The Supreme Court held that in diversity actions, class members' claims which were individually less than the $10,000 amount in controversy requirement could not aggregate their claims to meet the jurisdictional amount. In furthering the doctrine established in *Snyder*, the Supreme Court, in Zahn v. International Paper Company, held that even though the class representatives individually satisfied the amount in controversy requirement, unless all class members could also satisfy the requirement, the suit could not be held in federal court. *See* Zahn v. International Paper Co., 414 U.S. 291 (1973). Thus, a federal court cannot exercise pendent or ancillary jurisdiction over those individual class members' claims that do not meet the amount in controversy requirement. *Id.* These two decisions indicated that state courts are likely to be the only forum available for small claim multistate class actions. *See generally* Comment, *Consumer Class Actions with a Multistate Class: A Problem of Jurisdiction*, 25 HASTINGS L.J. 1411, 1414-23, (1947) [hereinafter cited as *Consumer Class Actions*] (stating that state courts are the only

only viable alternative for a class composed of small claimants. State court jurisdiction, however, has also posed a problem for multistate class actions.[4] Whether a state court may exercise personal jurisdiction over absent class plaintiffs has been an issue of considerable controversy.[5]

The United States Supreme Court, in *Phillips Petroleum Company v. Shutts*,[6] resolved this controversy.[7] The Supreme Court de-

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forum for the majority of consumer class actions). *See also* Ross, *Multistate Consumer Class Actions in Illinois*, 57 CHI.[-]KENT L. REV. 397, 398-99 (1981) [hereinafter cited as Ross] (for practical purposes, the consumer class action has been closed out of the federal court).

4. It is a basic principle of jurisprudence that a court cannot bind a party over whom it lacks jurisdiction. Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982). In class actions, a valid judgment has *res judicata* and collateral estoppel effects which bind not only the class representatives, but also each of the unnamed class members, thereby barring class members from bringing subsequent individual actions on the same claims or issues. *See, supra* note 3, at 1424 n.76 (once a class action proceeds to a final decree, individual class members no longer have the right to bring an action because, under the principle of *res judicata*, the claim has been settled); Note, *Toward a Policy-Based Theory of State Court Jurisdiction Over Class Actions*, 56 TEX. L. REV. 1033, 1044 n.67 [hereinafter cited as *Policy-Based Theory*] (an individual is denied access to a court to relitigate a claim previously tried in a class suit if that individual was a member of the class). Consequently, before a court can render a valid judgment in a class action suit, it must first establish some form of jurisdiction over all parties to the suit. *See* Pennoyer v. Neff, 95 U.S. 714, 729-33 (1877).

There are two main categories of jurisdiction: personal jurisdiction and subject matter jurisdiction. Personal jurisdiction consists of the "legal power of the court to render a personal judgment against a party to an action or a proceeding." BLACK'S LAW DICTIONARY 767 (5th ed. 1979). Subject matter jurisdiction consists of the "power of a particular court to hear the type of case that is then before it." *Id.* While subject matter jurisdiction is the primary obstacle that class actions must overcome in the federal forum, personal jurisdiction is the primary obstacle that class actions must overcome in the state courts. For a discussion of class actions and federal jurisdiction see *supra* note 3.

5. *Compare* Comment, *State Court Jurisdiction Over Multistate Plaintiff Class Actions: Minimum Contacts and Miner v. Gillette*, 69 IOWA L. REV. 795 (1984) [hereinafter cited as *State Court Jurisdiction*] (supporting state court jurisdiction over absent class action plaintiffs in class action suits regardless of whether those class members have any contacts with forum); *and* Note, *Multistate Plaintiff Class Actions: Jurisdiction and Certification*, 92 HARV. L. REV. 718 (1979) [hereinafter cited as *Jurisdiction and Certification*] (through permitting state courts to adjudicate the claims of multistate class actions, mass wrongs can be remedied which would otherwise go uncorrected); *with* Comment, *Jurisdiction Over Unnamed Plaintiffs in Multistate Class Actions*, 73 CALIF. L. REV. 181 (1985) (minimum contacts test should be applied to absent multistate class action plaintiffs); *and* Note, *Personal Jurisdiction and Multistate Plaintiff Class Actions: The Impact of World-Wide Volkswagen Corp. v. Woodson*, 32 DRAKE L. REV. 441 (1982) [hereinafter cited as *The Impact of World-Wide Volkswagen*] (considerations of federalism preclude a state court from adjudicating the claims of nonresident class members in a multistate class action).

6. 105 S. Ct. 2965 (1985).

7. In *Shutts*, the Supreme Court was faced with the issue whether, consistent with due process and the principles of federalism, a state court could exercise personal jurisdiction over the unnamed, nonresident class members in a plaintiff class action where the class members had no contacts with the forum and had not affirmatively consented to the forum state's jurisdiction. *Id.* at 2972.

termined that the traditional minimum contacts test for personal jurisdiction did not apply to nonresident class action plaintiffs.[8] Instead, a state court need only ascertain that minimal procedural due process requirements are met. The *Shutts* Court held that a state court may constitutionally exercise personal jurisdiction over a multistate plaintiff class where all potential class members have been provided with proper notice of the litigation, the opportunity to appear in person or by counsel, the opportunity to opt out of the class, and adequate legal representation.[9] In allowing a state court to exercise personal jurisdiction over the claims of nonresident members, the Court took a vital step toward ensuring the full and fair litigation of multistate class actions as intended by Congress in the Federal Rules of Civil Procedure.[10]

During the 1970's, Phillips Petroleum Company produced or purchased natural gas from leased land located in eleven states.[11] Because Phillips Petroleum sold this gas through interstate commerce, the Federal Power Commission (FPC) regulated the prices at which the gas was sold.[12] Between 1974 and 1978, Phillips Petroleum was allowed to collect tentative increased gas prices, subject to the FPC's final approval.[13] Although Phillips Petroleum received higher prices for its gas during this period, the company suspended any increases in royalties paid to the royalty owners.[14]

When Phillips Petroleum received the FPC's final approval of the price increase,[15] it paid the royalty owners the increased royal-

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8. *Id.* at 2976.

9. *Id.*

10. *See* FED. R. CIV. P. 23.

11. The gas leases in question were located in Arkansas, Illinois, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Utah, West Virginia, and Wyoming. The great majority of the leases were located in Oklahoma and Texas. *Id.* at 2997.

12. *Id.* The Federal Power Commission (FPC) is now known as the Federal Energy Regulatory Commission. *Id.*

13. If the FPC had denied Phillips Petroleum's proposed price increase, Phillips Petroleum would have had to refund to its customers the difference between the approved price and the higher price charged, plus interest at a rate set by statute. *Id.* *See* 18 C.F.R. § 154, 102 (1984).

14. The suspension of royalties affected approximately 33,000 royalty owners residing in all fifty states, the District of Columbia, and several foreign countries. Shutts v. Phillips Petroleum Co., 235 Kan. 195, 203, 679 P.2d 1159, 1166 (1984). Royalty owners had the option to receive royalties based on the higher gas prices on the condition that they would provide Phillips Petroleum with a bond of indemnity for the increase, plus interest, in case the FPC denied the increase, and a refund was due to the customers. *Shutts*, 105 S. Ct. at 2969. A small percentage of the royalty owners provided this indemnity. *Id.*

15. Phillips Petroleum suspended royalties three times while price increases pended. The FPC gave approval of the three price increases in three separate opinions. FPC Opinion No. 699 affected suspended royalties from July, 1974 through July, 1976 for a total amount of $3,696,274.97. FPC Opinion No. 749 affected suspended royalties from January, 1976 through February, 1978 for a total amount of $2,873,827.18. FPC Opinion No. 770 affected suspended royalties from August, 1976

ties which they had earned during the suspension periods.[16] The company, however, neither paid nor offered to pay any interest on the suspended royalties.[17] Consequently, Irl Shutts, Robert Anderson, and Betty Anderson,[18] on behalf of themselves and all other similarly situated royalty owners, filed a class action suit in a Kansas state court, seeking to recover the interest on their suspended royalties.[19]

Over Phillips Petroleum's objection,[20] the trial court certified the multistate plaintiff class and appointed Shutts and the Andersons class representatives.[21] Subsequently, notice of the certification was issued through first-class mail, informing each class member of his right to opt out of the class.[22] The trial court, applying Kansas law, found Phillips Petroleum liable to all class members for the interests on the suspended royalties.[23]

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through July, 1977 for a total amount of $44,744,024.10. *Shutts*, 235 Kan. at 202, 679 P.2d at 1165.

16. *Shutts*, 105 S. Ct. at 2969.

17. *Id.* During the suspension periods, Phillips Petroleum had full access to the suspended royalty money. *Id.* This characterizes the money more as a loan. Therefore, the argument that interest should be paid to the royalty owners is intensified.

18. Irl Shutts resided in Kansas and owned oil leases in Oklahoma and Texas. Robert and Betty Anderson resided in Oklahoma and owned an oil lease there. *Id.*

19. *Id.* at 2969.

20. Phillips Petroleum moved to dismiss the unnamed nonresident class members' claims on the ground that the Kansas state court lacked personal jurisdiction. The trial court denied the motion and certified the class. Phillips Petroleum then sought an original mandamus action in the Supreme Court of Kansas which was also denied. Finally, Phillips Petroleum petitioned the United States Supreme Court in Phillips Petroleum Co. v. Duckworth, 103 S. Ct. 725 (1983), but review was denied. *Shutts*, 235 Kan. at 200, 679 P.2d at 1167.

21. *Shutts*, 105 S. Ct. at 2969.

22. The notice contained a detailed description of the action. Additionally, the notice informed each class member that he had the right to appear in person or through counsel. Also, the notice provided an "opt-out" form which, if returned, would exclude the member from the class. Otherwise, the judgment would bind each class member. After issuing the notice of the class action, the size of the class was reduced from 33,000 potential class members to 28,100 members because 3,400 claimants elected to opt out and notice could not be delivered to another 1,500 claimants. *Id.*

23. *Id.* at 2970. In its holding, the trial court relied heavily on an earlier, unrelated class action with similar facts. Shutts, Executor v. Phillips Petroleum Co., 222 Kan. 527, 567 P.2d 1292 (1977), *cert. denied*, 434 U.S. 1068 (1978) [hereinafter cited as *Shutts I*]. The *Shutts I* case involved the same parties and a similar issue as the present *Shutts* case does; however, the oil leases in question were different. In *Shutts I*, the Kansas Supreme Court held that as a matter of Kansas equity law, the gas company owed interest to royalty owners for royalties suspended pending final FPC approval of a price increase based on the theory of unjust enrichment. *Id.* at 541, 567 P.2d at 1315. In *Shutts I*, the Kansas Supreme Court stated that while minimum contacts between the defendant and the forum were necessary to establish personal jurisdiction in ordinary actions, the only element necessary to exercise jurisdiction over nonresident plaintiff class members was procedural due process. *Id.* at 530, 567 P.2d at 1295.

Shutts I is distinguishable from the present case because in *Shutts I*, the court found that the suspended royalties constituted a "common fund" thereby giving the

Phillips Petroleum appealed the trial court's decision, contending that the trial court had lacked personal jurisdiction over the nonresident class members.[24] The Kansas Supreme Court rejected the company's argument and affirmed the trial court's decision.[25] The Kansas Supreme Court based its holding on two principles. First, the court held that because the absent class members were plaintiffs, not defendants, the traditional minimum contacts test for personal jurisdiction was not applicable.[26] Second, the court held that in class actions, so long as minimal due process protections were provided to all class members, a state court could properly assert personal jurisdiction over nonresident class members.[27] Finding these due process requirements satisfied, the Kansas Supreme Court held that the trial court had jurisdiction over the entire multistate

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court *in rem* jurisdiction over the case. *Id.* at 550-53, 567 P.2d at 1310-12. Additionally, the *Shutts I* court found that Kansas had a significant state interest in the adjudication of the suit because the majority of the oil leases involved were within Kansas state borders. *Id.* at 533, 567 P.2d at 1298. In the present *Shutts* case, a small minority of the oil leases were within Kansas state borders. Thus, the significance of Kansas' interest in the adjudication of the present suit was much less than in *Shutts I.*

24. *Shutts,* 105 S. Ct. at 2970. Phillips Petroleum contended that the trial court's holding that a state court can exercise personal jurisdiction over nonresident class members was not in accord with recent United States Supreme Court decisions which repeatedly held that, absent consent, due process concerns preclude state court jurisdiction over nonresidents who lacked "minimum contacts" with the forum. *Id. See, e.g.,* Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985) (Florida court was held to have properly exercised personal jurisdiction over nonresident defendant because a contract between the defendant and a Florida corporation constituted substantial contact with the forum); Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982) (Pennsylvania's long-arm statute allowed the court to find sufficient minimum contacts between the nonresident defendant and the forum state); Rush v. Savchuk, 444 U.S. 320, 333 (1980) (Minnesota could not, consistent with due process, exercise jurisdiction over nonresident defendant who had no contacts with the forum state); World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286, 291 (1980) (a state court may exercise personal jurisdiction over a nonresident defendant only so long as there existed minimum contacts between the defendant and the forum state); Shaffer v. Heitner, 433 U.S. 186, 212 (1977) (Delaware's assertion of personal jurisdiction over the nonresident defendant violated due process because the defendant had no contacts, ties, or relations to Delaware); Hanson v. Denckla, 357 U.S. 235, 251 (1958) (Florida state court improperly exercised personal jurisdiction over the nonresident defendant because the defendant had performed no act which could constitute purposeful availment, thus no minimum contacts attached); International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (defendant conducted systematic and continuous activity within the forum state, thus sufficient contacts were present to subject the nonresident defendant to Washington state court's personal jurisdiction).

Phillips Petroleum raised a second objection to the trial court's decision, claiming that Kansas law could not be applied to every claim. Phillips Petroleum further argued that the trial court should have looked to the law of the states where the oil leases were located to determine whether interest on the suspended royalties was recoverable and, if so, at what rate. *Shutts,* 105 S. Ct. at 2970.

25. *Shutts,* 105 S. Ct. at 2970.

26. *Id.*

27. *Id.*

plaintiff class.[28]

Phillips Petroleum subsequently petitioned this decision to the United Stated Supreme Court. The Court, with seven justices affirming and one concurring,[29] reasoned that, although some of the class members were nonresidents who had no contacts with the forum state, the class members were plaintiffs, and therefore the traditional minimum contacts test for personal jurisdiction was not applicable.[30] The *Shutts* Court also concluded that due process considerations were afforded to absent class members because each class member was provided with notice of the action, an opportunity to appear in person or through counsel,[31] an opportunity to opt out,[32] and adequate legal representation.[33]

The Supreme Court's analysis centered on distinguishing among the different burdens of litigation placed upon class action plaintiffs as opposed to those placed upon a defendant in a nonclass suit.[34]

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28. *Id.*

29. Justice Stevens concurred with the decision that the Kansas court properly exercised jurisdiction over the class action, but dissented as to the choice of law holding. Justice Powell took no part in this decision. *Id.* at 2981.

30. *Shutts*, 105 S. Ct. at 2973. It should be noted, however, that the Supreme Court specifically limited its holding to "those class actions which seek to bind known plaintiffs concerning wholly or predominately for money judgments." The Court further stated that it did not intend its discussion of personal jurisdiction to address "class actions where the jurisdiction is asserted against a "defendant" class." *Id.* at 2975 n.3.

The Supreme Court in *Shutts* also was faced with two other important issues. First, whether Phillips Petroleum had standing to assert that the Kansas court had no jurisdiction over the nonresident class members. Second, the Supreme Court was faced with a conflict of laws issue concerning the use of Kansas law to determine all claims. *Id.* at 2966. Due to the length limitations of this note, the issue of personal jurisdiction will be the sole topic of discussion.

31. The type of notice due process requires varies with the circumstances of the action. The notice must be the best practicable, "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950). In class actions, the due process clause requires only that notice reach a sufficient number of class members to safeguard the interests of all class members. *Id.* at 319. *See, e.g.*, Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 174-177 (1974) (United States Supreme Court mandated individual notice in a class action under the Federal Rules of Civil Procedure). It should be noted, however, that the Federal Rules of Civil Procedure specifically allow certain types of class actions to be maintained without directing notice to all potential class members. *See* FED. R. CIV. P. 23(b)(1)-(2).

32. A class member may exercise his right to opt out by executing and returning a "request for exclusion" form to the court. *Shutts*, 105 S. Ct. at 2969.

33. Absent class members must be adequately represented by the class representatives. Otherwise, the judgment is not binding upon the absent parties. Hansberry v. Lee, 311 U.S. 32, 42-3 (1940).

34. An out-of-state defendant summoned to litigate in a foreign state is faced with full adjudicatory powers of that state. The defendant generally must hire counsel, travel to the forum state and participate in extended and costly discovery. The defendant may also be forced to respond in damages or some other form of recovery. *Shutts*, 105 S. Ct. 2973-74.

Relying on *International Shoe Company v. Washington*[35] and its progeny,[36] the Court observed that the traditional minimum contacts requirement for personal jurisdiction was created solely to protect a defendant from the travail of litigating in a distant forum.[37] In contrast, the Court stated that because absent class action plaintiffs are not compelled to travel to a distant forum to litigate,[38] and

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In contrast, class action plaintiffs need not hire counsel, and rarely are they subjected to counterclaims, cross claims, or liability for fees or costs. *Id.* at 2973-74. *Cf.* Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) (Court held the class representative, not the defendant, responsible for the cost of notice to members of the class). Adverse judgments typically do not bind class action plaintiffs for any damages, yet an adverse judgment may have a *res judicata* effect. *Shutts*, 105 S. Ct. at 2973-74. *See also State Court Jurisdiction, supra* note 5, at 806-07 (an examination of the different interests at stake for defendants and class plaintiffs shows that minimum contacts should not be applied to plaintiff class action settings); *Jurisdiction and Certification, supra* note 5, at 726-27 (plaintiff class actions are distinguishable from other types of lawsuits, thus traditional tests for personal jurisdiction do not apply); Kamp, *The Multistate Consumer Class action: Local Solutions, National Problems*, 87 W. VA. L. REV. 271, 285 (1985) [hereinafter cited as Kamp] (members of plaintiff class are not like defendants in nonclass suits).

35. 326 U.S. 310 (1945).

36. *See* Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985) (Florida court was held to have properly exercised personal jurisdiction over nonresident defendant because a contract between the defendant and a Florida corporation constituted substantial contact with the forum state); Calder v. Jones, 104 S. Ct. 1482 (1984) (defendants, Florida residents, were properly subjected to California state court's personal jurisdiction because the defendants' intentional acts in Florida were calculated to injure the plaintiff in California, thereby constituting minimum contacts between the defendants and the California forum); Helicopteros Nacionales de Columbia v. Hall, 104 S. Ct. 1868 (1984) (mere purchases within a state are not enough to warrant a state court's assertion of personal jurisdiction over a nonresident defendant in a cause of action not related to those purchase transactions); Keeton v. Hustler Magazine, 104 S. Ct. 1473 (1984) (publisher's regular circulation of magazines in a forum state was sufficient minimum contact with that state to justify assertion of jurisdiction in an action based on the contents of the magazine); Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 94 (1982) (Pennsylvania's long-arm statute allowed the court to find sufficient minimum contacts between the nonresident defendant and the forum state); Rush v. Savchuk, 444 U.S. 320 (1980) (Minnesota could not, consistent with due process, exercise jurisdiction over nonresident defendant who had no contacts with the forum state); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) (a state court may exercise personal jurisdiction over a nonresident defendant only where there exists minimum contacts between the defendant and the forum state); Shaffer v. Heitner, 433 U.S. 186 (1977) (Delaware's assertion of personal jurisdiction over the nonresident defendant violated due process because the defendant has no contacts, ties, or relations to Delaware); Hanson v. Denckla, 357 U.S. 235 (1958) (the Florida state court improperly exercised personal jurisdiction over the nonresident defendant because the defendant had performed no act which could constitute purposeful availment, thus no minimum contacts).

37. *Shutts*, 105 S. Ct. at 2973. When a court compels a defendant to answer a plaintiff's complaint, generally, the defendant must hire counsel and travel to a distant forum to defend his interests. The defendant stands to have a judgment rendered against him that may include damages, court costs, or any other form of remedy the court may wish to impose. If the defendant fails to appear, he faces a default judgment. Because of the magnitude of these burdens, the Court has held a defendant must have minimum contacts with the forum state before he can be forced to litigate there. *Id.*

38. Class actions are designed so that the absent class plaintiffs need not retain

because designated class members represent the absent claimants, absent class action plaintiffs enjoy a procedurally superior position to defendants in nonclass suits.[39] Additionally, the Court reasoned that procedural requirements, such as requiring the parties to meet the burden of class certification[40] and offering class members the opportunity to opt out,[41] further ensured the protection of absent class action plaintiffs' rights.[42] Identifying the differing characteristics of class action plaintiffs and defendants in nonclass suits, the Court concluded that the due process clause did not protect class action plaintiffs to the same degree it protected defendants in nonclass suits.[43] Finding due process considerations satisfied in the *Shutts*

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counsel or appear in court. Nor can absent class members be subject to coercive court orders, damages, or the imposition of court costs. *Id.* at 2974.

39. Absent class members may sit back idly and reap the benefits of the work of class representatives. *See* Kamp, *supra* note 34, at 285; *State Court Jurisdiction, supra* note 5, at 807.

40. The standard for class action certification in most jurisdictions requires that the judge conduct an inquiry into the common nature of the class members' claims, the adequacy of representation, the court's jurisdiction over the class, and any other matter which will bear upon proper representation of the absent plaintiffs' interests. *Shutts,* 105 S. Ct. at 2974 (citing KAN. STAT. ANN. § 60-223 (1983); FED R. CIV. P. 23).

41. It is a well-established principle that any plaintiff may consent to the jurisdiction of a state regardless of his contacts with that state. Keeton v. Hustler Magazine, Inc., 104 S. Ct. 1473 (1984). The Supreme Court, in *Shutts,* equated the opt out procedure with consent. *Shutts,* 105 S. Ct. at 2975-76.

Phillips Petroleum contended that the opt out procedure was not sufficient to satisfy due process. Rather, nonresident class members, according to Phillip's rationale, must opt in the class, thereby affirmatively consenting to the forum state's jurisdiction. *Id.* Phillips Petroleum supports this contention by stating that failure to opt out cannot constitute consent because "more often than not, a failure to respond to a class notice will result from ignorance, timidity, unfamiliarity with business or legal matters, or mere unconcern." Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure,* 81 HARV. L. REV. 356, 398 (1967). This very argument, however, also supported an opt out procedure. Requiring that potential class members, affirmatively request inclusion in a class suit would result in freezing out the claims of some class members, especially those with small claims, who for one reason or another will simply not take the affirmative step to request inclusion. *Id.* The purpose of the class action procedure is the efficient litigation of a large number of claims. An opt in procedure would impede this very purpose. *Shutts,* 105 S. Ct. at 2976.

Additionally, there is no precedent to support the position that due process requires an opt in procedure. The majority of state statues, as well as the Federal Rules of Civil Procedure, promote the use of the opt out procedure as opposed to the opt in procedure. *Id.* at 2976 n.5. For these reasons, it is apparent that there is little, if any, merit to Phillips Petroleum's contention that an opt in procedure would better serve due process than an opt out procedure.

42. *Shutts,* 105 S. Ct. at 2976.

43. *Shutts,* 105 S. Ct. at 2976. The United States Supreme Court first noted the difference between class action suits and nonclass suits in Hansberry v. Lee, 311 U.S. 32, 41-42 (1940). This oft-cited passage reads:

> [T]here is a recognized exception [to ordinary jurisdictional rules] that . . . the judgment in a "class" or "representative" suit to which some members of the class are parties, may bind members of the class or those represented who were not made parties to it.
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> . . . Courts are not frequently called upon to proceed with the causes in

case, the Supreme Court held that the Kansas state court's exercise of personal jurisdiction over absent class members was consistent with due process requirements.[44]

The Supreme Court's conclusion that a state court may exercise personal jurisdiction over the claims of nonresident class members constituted a vital step in the process of ensuring the full and fair litigation of multistate class actions. A decision otherwise would have denied judicial access to multistate class action plaintiffs with small monetary claims, thus contradicting the explicit purpose of class action adjudications.[45] Although precedent supports the Court's conclusion, the Court's analysis in reaching this conclusion was inadequate. Generally, restrictions are placed upon a state court's exercise of personal jurisdiction for two reasons: first, to guarantee protection of the personal liberty interests of the parties to the litigation;[46] second, to protect state sovereignty concerns.[47] The *Shutts* Court, however, based its decision primarily on matters

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> which the number of those interested in the litigation is so great as to make difficult or impossible the joinder of all because some are not within the jurisdiction or because their whereabouts is unknown or where if all were made parties to the suit it continued abatement by the death of some would prevent or unduly delay a decree. In such cases where the interests of those not joined are of the same class as the interests of those who are, and where it is considered that the latter fairly represent the former in the prosecution of the litigation of the issues in which all have a common interest, the court will proceed to a decree.

Id. The *Shutts* Court interpreted the theory set forth in *Hansberry* to stand for the proposition that class actions were an exception to the traditional standards of personal jurisdiction. *Shutts*, 105 S. Ct. at 2973.

The *Hansberry* case spawned a dispute concerning the relevance of the minimum contacts test to class actions. Class action advocates argue that the above-cited passage demonstrates that as long as the nonresidents are adequately represented, the judgment binds them. Contact with the forum state is not a prerequisite for jurisdiction in plaintiff class actions. *See* Note, *Illinois Multistate Plaintiff Class Actions: Abrogation of Jurisdictional Limitations on State Sovereignty—Miner v. Gillette Co.*, 31 DEPAUL L. REV. 471, 478 (1982) [hereinafter cited as *Illinois Multistate Plaintiff Class Actions*] (the *Hansberry* decision stands for the proposition that an absent plaintiff class member may be bound by a judgment provided procedural due process protections were afforded); *Policy-Based Theory*, *supra* note 4, at 1045-46 (*Hansberry* has been cited for the proposition that there is a difference between jurisdictional standards governing class actions and those governing other actions). *But see The Impact of World-Wide Volkswagen*, *supra* note 5, at 443 (*Hansberry* did not involve nonresident class plaintiffs, thus it may well be questioned that *Hansberry* authorized multistate class actions); *State Court Jurisdiction*, *supra* note 5, at 802-03 (*Hansberry* is ambiguous, it involved only resident plaintiffs and was decided before *International Shoe*, thus *Hansberry* does not stand for the proposition that class actions are an exception to the minimum contacts requirement for personal jurisdiction).

44. *Shutts*, 105 S. Ct. at 2976-77.

45. State courts are the only forum available to class action plaintiffs who cannot meet the amount in controversy requirement for federal diversity jurisdiction. *See supra* note 3.

46. *World-Wide Volkswagen*, 444 U.S. at 292-94.

47. *Id.*

of convenience,[48] rather than conducting a complete analysis of the controversial aspects of personal jurisdiction.

In examining the *Shutts* decision, it is necessary to first understand the history of personal jurisdiction.[49] In 1877, the United States Supreme Court decided *Pennoyer v. Neff*[50] which established that, absent consent, a state court may not exercise personal jurisdiction and authority over persons or property outside its territorial boundaries.[51] In 1945, due to technological transformations in American society,[52] the Supreme Court, in *International Shoe Company v. Washington*,[53] replaced the *Pennoyer* rule with the minimum contacts test of personal jurisdiction.[54] The Supreme Court has since repeatedly affirmed the minimum contacts test as a viable rule for determining the propriety of personal jurisdiction over parties in state courts.[55]

The concept of minimum contacts focuses on the parties' inter-

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48. For a discussion of these matters of convenience, see *supra* notes 34, 37-39.

49. There are three types of jurisdiction. *In personam* jurisdiction includes actions which hold the defendant personally liable to the plaintiff. In contrast, actions encompassing only property located within the territorial confines of a forum either fall under *in rem* or *quasi in rem* jurisdiction. *See generally Developments in the Law-State Court Jurisdiction*, 73 HARV. L. REV. 909, 935-65 (1960) (a general discussion distinguishing among *in personam*, *in rem*, and *quasi in rem* jurisdiction).

50. 95 U.S. 714 (1877).

51. *Id.* at 722.

52. Modernized transportation and communication systems have increased the amount of interstate disputes. Simultaneously, these developments in technology eased the burdens of litigation in distant forums. *World-Wide Volkswagen*, 444 U.S. at 292-93.

53. 326 U.S. 310 (1945).

54. *Id.* at 316. The *International Shoe* Court stated that the due process clause precluded the exercise of jurisdiction over nonresidents "with which the state has no contacts, ties, or relations". *Id.* at 319.

55. Following *International Shoe*, the Court's inquiry concerning a state court's jurisdictional powers shifted dramatically. The *Pennoyer* concern with the mutually exclusive sovereignty of states gave way to a focus on the relationship between the defendant, the litigation, and the forum state. The United States Supreme Court endorsed this tripartite scheme in Shaffer v. Heitner, 433 U.S. 186 (1977). In *Shaffer*, the Court concluded that the *International Shoe* minimum contacts requirement applied not only to *in personam* jurisdiction, but also to *in rem* jurisdiction. *Id.* at 209, 212. The *Shaffer* Court declared that "*all assertions* of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Id.* at 212 (emphasis added). This blanket statement gave rise to the question of whether minimum contacts was the only requirement for state jurisdiction.

Three years later, the Supreme Court answered this question in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (19800). The *World-Wide Volkswagen* Court reaffirmed the sovereign right of states to hear suits arising within their borders. The *World-Wide Volkswagen* Court held that accompanying this right, under the minimum contacts theory, states could not secure jurisdiction over nonresident defendants who had not purposefully availed themselves of the benefits of the state's laws in such a matter that they could reasonably anticipate being hauled into the state's courts. *Id.* at 297. For a list of cases endorsing the *International Shoe* minimum contacts test, see *supra* note 36.

actions with the forum state.[56] The minimum contacts test is premised on the theory that due process permits state courts to exercise personal jurisdiction over nonresident defendants who have certain contacts with the forum state. Thus, the minimum contacts requirement ensures that the maintenance of the action in a forum does not offend the "traditional notions of fair play and substantial justice."[57] Included in these notions of fair play and substantial justice is the principle of interstate federalism embodied in the Constitution.[58] Accordingly, the minimum contacts requirement limits a state court's jurisdictional powers in order to protect the personal liberty interests of nonresident parties in obtaining a fair adjudication of their claims. In addition, the minimum contacts requirement guarantees the concept of state sovereignty[59]

The fundamental concern in protecting individual liberty interests is ensuring the fairness of the proceedings.[60] The *Shutts* Court reasoned that because litigation places fewer burdens on class action plaintiffs than it does on defendants in nonclass suits, it is fair to afford class action plaintiffs a lesser degree of due process protection.[61] Although the Court's conclusion is correct, a more precise justification for its holding is that the differences between the interests of class action plaintiffs and those of defendants in nonclass suits justify the application of a less stringent standard of due process in class action proceedings.

The Supreme Court relied primarily on matters of convenience to reach its conclusion that the minimum contacts requirement does not apply in multistate plaintiff class action suits.[62] The Supreme Court, however, neglected to address the substantive distinction of the interests of class action plaintiffs and defendants in nonclass suits. This distinction would have better supported the Court's

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56. Whether due process is satisfied must depend upon the quality and nature of the defendant's activity in relation to the fair and orderly administration of law. When a defendant exercises the privileges of conducting business within a state, the exercise of this privilege gives rise to obligations within that state which may require the defendant to respond to suit there. *International Shoe*, 326 U.S. at 319.

57. *Id.* at 316.

58. *World-Wide Volkswagen*, 444 U.S. at 293. The commerce clause of the Constitution provides for the interdependence of the states, but also intends that the states retain "many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts." *Id. See also* Hanson v. Denckla, 337 U.S. 235, 251, 254 (1958) (even if a defendant suffers minimal or no inconvenience from being forced to litigate in a distant forum, the due process clause, acting as an instrument of interstate federalism, may divest a state of its power to exert personal jurisdiction).

59. *World-Wide Volkswagen*, 444 U.S. at 291-93.

60. *See Policy-Based theory, supra* note 4, at 1040 (the goal of due process is to ensure fairness).

61. *Shutts*, 105 S. Ct. at 2973-75.

62. *Id.*

holding. Clearly, in both class action suits and nonclass suits, all parties are precluded from relitigating issues decided in prior actions.[63] However, a distinction exists between class action plaintiffs and nonclass defendants when adverse judgments are rendered. A judgment against a defendant in a nonclass suit results in a deprivation of constitutionally protected property interests.[64] In contrast, a judgment adverse to the interests of class action plaintiffs merely precludes those individuals from relitigating the issues actually decided in the class action.[65] Although the right to a cause of action is considered a protected property right,[66] due process requires only that some effective procedure exists for persons to obtain relief.[67]

In class actions, absent class members receive an opportunity to seek redress for their injuries through their class representatives. Although a class action procedure is dictated, absent class members still receive their constitutionally protected right to a cause of ac-

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63. A prior action may bar a subsequent action in two ways: the doctrine of *res judicata* or the doctrine of collateral estoppel. The doctrine of *res judicata* provides that a final judgment by a court of competent jurisdiction is an absolute bar to subsequent proceedings between the same parties and their privies based on the *same causes of action.* Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 n.5 (1979). Collateral estoppel also operates as an absolute bar in a subsequent action where the same parties or their privies attempt to litigate identical issues necessarily decided by a court of competence in a prior cause of action. Two requirements must be met before collateral estoppel will apply. First, the issue decided in the prior adjudication must be identical to the issue in the second suit. Second, the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding. *Id.* at 328.

64. *See Developments in the Law—Class Actions,* 89 HARV. L. REV. 1318, 1403-04 (1976) (a judgment against a defendant results in the deprivation of liberty or property, thus a coercive effect is evident).

65. A judgment adverse to the interests of class plaintiffs merely results in a *res judicata* effect, that is, an individual member cannot relitigate the issues decided in the class action. *Id.* at 1404. This *res judicata* effect, however, would be important only after the absent class member had an opportunity to collaterally attack the prior decision. One commentator stated:

> It is premature to decide the issue of *res judicata* at the commencement of an action. That issue might be better resolved later "if the judgment is thereafter collaterally attacked by an absent party [when] a ;more careful scrutiny of its representation character may be made in determining whether it is *res judicata.*"

Starrs, *The Consumer Class Action—Part II: Consideration of Procedure,* 49 B.U.L. REV. 407, 442-43 (1969) (quoting Darr v. Yellow Cab Co., 67 Cal. 2d 695, 706, 433 P.2d 732, 740, 63 Cal. Rptr. 724, 732 (1967)). *See also* RESTATEMENT (SECOND) OF JUDGMENTS § 86 (1980) (a valid state court judgment has the same *res judicata* effect in a subsequent action in federal court as it would in state court); Migra v. Warren City School District Board of Education, 104 S. Ct. 892 (1984) (state court judgment had the same preclusive effect in federal court that the judgment would have had in the state courts).

66. *See* Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982) (a cause of action is a type of property worthy of due process protection).

67. Gibbes v. Zimmerman, 290 U.S. 326, 332 (1933) (a vested cause of action is property for which due process only guarantees preservation through some effective procedure).

tion.[68] Furthermore, a class action provides constitutionally sufficient protection of the individual's substantive claims.[69] This distinction between the interests at stake of plaintiff class members and defendants in nonclass suits justifies disregarding the minimum contacts requirement for personal jurisdiction in multistate plaintiff class action settings.[70]

In addition to protecting individual liberty interests, the minimum contacts requirement for personal jurisdiction has also been viewed as guaranteeing state sovereignty.[71] The *Shutts* Court, relying on *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*,[72] stated that personal jurisdiction represents a restriction on a state court's power only as a matter of individual liberty, not as a matter of state sovereignty.[73] Consequently, the Court, in a single sentence, dismissed a century of case law dealing with the effect of state sovereignty on personal jurisdiction.[74] In so doing, the Court ignored the important issue of a state's interest in litigating

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68. One commentator noted, "the only right the [class member] loses . . . is the right to bring the action *himself*, and the remedy afforded by the class action can provide constitutionally sufficient alternative protection of the individual's underlying substantive claim." *Developments in the Law—Class Actions*, 89 HARV. L. REV. 1318, 1404 n.73 (1976) (emphasis in original). *See also* Forde, *Illinois' New Class Action Statute*, 59 CHI. B. REC. 120, 127-28 (1977) (unless procedural due process protections are inadequate, the absent class member's interest will be vigorously promoted by the class representatives).

69. It is a generally recognized rule of law that in class actions, class representatives are entitled to stand in judgment for absent class members. Such a procedure affords protection to absent parties which satisfies the due process and full faith an credit clauses. *Hansberry*, 311 U.S. at 43.

See also Jurisdiction and Certification, *supra* note 5, at 728 (because class actions are designed to assure adequate representation for absent class members, to bind such a person who had already received a chance to litigate his claim hardly seems offensive to due process); *Policy-Based Theory*, *supra* note 4, at 1044-45 n.67 (the binding effect of an adverse decision in a class action merely denies an absent class member access to another court to relitigate their claims).

70. Morrissey v. Brewer, 408 U.S. 471, 481 (1972) ("due process is flexible and calls for such . . . protections as the particular situation demands"). Because class action plaintiffs have less at stake in litigation than nonclass defendants, it appears logical that due process affords a lesser degree of protection to class plaintiffs. Thus, minimum contacts need not be required in order for a court to establish personal jurisdiction over class action plaintiffs.

71. *See supra* note 59 and accompanying text.

72. 456 U.S. 694 (1982).

73. *Shutts*, 105 S. Ct. at 2973.

74. The effect of state sovereignty concerns on personal jurisdiction was first discussed in Pennoyer v. Neff, 95 U.S. 714 (1877). Following *Pennoyer*, the state sovereignty concern was a reoccurring theme in Supreme Court cases involving personal jurisdiction. *See* Hanson v. Denckla, 357 U.S. 235, 249-50 (1958) (state courts historically have confined their power to adjudicate controversies to matters with a nexus to the state); Shaffer v. Heitner, 433 U.S. 186, 199 (1977) (state courts consider sovereignty interests of individual states when exercising personal jurisdiction over controversies extending beyond state boundaries); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 290-92 (1980) (minimum contacts performs two functions, preservation of individual state sovereignty and protecting personal liberty interests).

matters involving its own citizens.

Although the Supreme Court in *Insurance Corp. of Ireland* rejected state sovereignty considerations as an independent justification for personal jurisdiction,[75] it is doubtful that the Court intended that state sovereignty concerns be totally disregarded.[76] Historically, considerations of fairness and state residual sovereignty rights have limited a state court's exercise of personal jurisdiction.[77]

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75. Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982). The *Insurance Corp. of Ireland* Court explained its rejection of state sovereignty as a basis of jurisdiction in the following passage:

> It is true that we have stated that the requirement of personal jurisdiction, as applied to state courts, reflects an element of federalism and the character of state sovereignty vis-a-vis other States. For example, in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980) we stated:
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> > [A] state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, 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 beyond the limits imposed on them by their status as coequal sovereigns in a federal system.
>
> Contrary to the suggestion of Justice Powell, post, at 713-714, our holding today does not alter the requirement that there be 'minimum contacts' between the nonresident defendant and the forum State. Rather, our holding deals with how the facts needed to show those 'minimum contacts' can be established when a defendant fails to comply with court-ordered discovery. The restriction on state sovereign power described in *World-Wide Volkswagen Corp.*, however, must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns. Furthermore, if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waive the personal jurisdiction requirement: Individual actions cannot change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected..

Id. at 702-03 n.10 (citations omitted).

76. *See generally* Kamp, *supra* note 34, at 289-93 (reconciling *Insurance Corp. of Ireland* with prior cases concerning personal jurisdiction is difficult).

77. *See* U.S. CONST. amend. X. The tenth amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or to the people." *Id.* The drafters of the Uniform Class Actions Act considered the principle of state sovereignty so significant as to implement it into this model code. Section 6 of the Uniform Class Actions Act provides:

> (a) A court of this State may exercise jurisdiction over any person who is a member of the class suing or being sued if: (1) a basis for jurisdiction exists or would exist in a suit against the person under the law of the State [or] (2) the state of residence of the class member, by class action law similar to subsection (b), has made its residents subject to the jurisdiction of the courts of this State.
>
> (b) A resident of this State who is a member of a class suing or being sued in another state is subject to the jurisdiction of that state if by similar class action law it extends reciprocal jurisdiction to this State.

Thus, when a forum state exercises jurisdiction over nonresident class members, that state's imposition of extraterritorial jurisdiction may well usurp a sister state court's right to hear suits arising within its own borders.[78] The *Shutts* Court failed to discuss these important concerns.

Class actions clearly pose much less of a threat to state sovereignty than nonclass suits. Because class procedures require that all class members be adequately represented,[79] sufficient constitutional protection to all class members' substantive claims is provided.[80] Thus, the interest of the class member's home state in providing a forum is mitigated if another jurisdiction offers an adequate forum for relief. Furthermore, class action adjudications were created in order to provide a judicially efficient procedure for litigating large numbers of similar claims.[81] To impose territorial limitations on a state's jurisdictional authority in a class action proceeding would seriously frustrate the very purpose for which the class action was created.[82]

The *Shutts* Court rejected a sovereignty-based objection to Kansas state court jurisdiction over the nonresident class members without expounding on its reasoning in making this rejection.[83] The Court thereby neglected the important question of state interest.

UNIFORM CLASS ACTIONS ACT § 6 (1976). For an overview of the history of personal jurisdiction, see *supra* notes 54-60 and accompanying text. *See also Illinois Multistate Plaintiff Class Action*, *supra* note 43, at 480-81 n.52 (territoriality plays a significant part in determining state court jurisdiction because states are residual sovereignties in the federal system); *Jurisdiction and Certification*, *supra* note 5, at 729-31 (precedent supports sovereignty as a basis of jurisdiction).

78. *See* Miner v. Gillette Co., 87 Ill. 2d 7, 20, 428 N.E.2d 478, 488 (1981) (Ryan, J., dissenting) (because Illinois has no interest in bringing nonresident litigation into the state, the court is usurping authority of other jurisdictions to provide a forum for protection of the rights of their citizens). *Cf. World-Wide Volkswagen Corp.*, 444 U.S. at 293-94 (the sovereign power of a state to try cases in its courts acts as an implied limitation on sovereign power of other states, subject only to due process concerns of fairness). A forum state's adjudication of a multistate claim based solely on commonality among class members' claims and judicial efficiency may not be a sufficient state interest to justify assertion of adjudicative power over a claim to the exclusion of all other interested states. However, the nature of the adjudication may justify the forum state's interest in a nationwide class suit, if the resident class members' claims cannot be vindicated without the inclusion of nonresidents. Also, if the alleged wrong occurred within the forum state, that state may assert a special interest in a multistate class action. In such instances, one state may properly assert its adjudicative power to the exclusion of other states. *See Illinois Multistate Plaintiff Class Actions*, *supra* note 43, at 488. *See generally* RESTATEMENT (SECOND) OF JUDGMENTS § 4 comment g (1980) (if another forum has substantially greater relationship with parties or the litigation, a court should refuse to entertain the action).

79. *See supra* note 34.

80. *See supra* note 73.

81. *See supra* notes 1-2 and accompanying text.

82. *See* Ross, *supra* note 3, at 425-26 (the purpose of the class action is enhanced when all claimants are joined in the class, regardless of their location).

83. *Shutts*, 105 S. Ct. at 2973.

While state interest should not necessarily preclude a state court from hearing a nationwide class action, it is an important determinative factor in deciding which state is best qualified to hear the suit.[84] Consequently, the *Shutts* Court's failure to address the effects of state sovereignty in nationwide class actions may result in a race for judgment when two or more jurisdictions simultaneously seek to adjudicate the claims of a plaintiff class. Furthermore, the possibility that any state may entertain a multistate class action renders both potential class members and defendants uncertain as to where their conduct will or will not subject them to liability.[85]

Prior to *Shutts*, multistate class plaintiffs who could not meet the amount in controversy requirement for federal diversity had no forum in which their claims could be effectively adjudicated.[86] The *Shutts* Court attempted to remedy this situation through allowing state courts to exercise personal jurisdiction over absent class action plaintiffs regardless of contacts with the forum state.[87] The Court, however, also required that before a state court can apply its own law in multistate actions to the class member's claims, the state must first have a significant contact with the claims asserted by each member of the plaintiff class.[88] The Court justified this second requirement by stating that contacts between the forum and the class plaintiffs create a state interest in the litigation, thereby ensuring that the choice of state law is not arbitrary or unfair.[89] As a result of *Shutts*, the Supreme Court, in effect, is allowing state courts to exercise jurisdiction over multistate classes, but at the same time is mandating that those courts apply the laws of as many as fifty states. Although the Supreme Court has provided nationwide class actions a forum for redress, it has simultaneously created an ambig-

84. In previous multistate class actions held in state forums, the states asserted personal jurisdiction over nonresident class members because a nexus between the litigation and that state gave it a special interest in adjudicating the case. *See* Schlosser v. Allis-Chalmers Corp., 86 Wis. 2d 226, 241, 271 N.W.2d 879, 885 (1978) (court stated it could reasonably be expected that a suit would arise in state of defendant's home office); *Shutts I*, 222 Kan. at 527, 567 P.2d at 1292 (the majority of the oil leases involved in the litigation were within Kansas, thus the court found a nexus between the state and the suit). *See also* Brandon v. Chefetz, 121 Misc. 2d 54, 61-62, 467 N.Y.S.2d 312, 317 (1983) (court looked at the composition of the class and the subject matter involved in the litigation to determine whether New York had sufficient interest in the suit to adjudicate the issues); Katz v. NVF Co., 119 Misc. 2d 48, 55, 462 N.Y.S.2d 975, 979-80 (1983) (New York had a substantial nexus to the litigation because the majority of class members were either New York residents or conducted business in New York).

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

86. *See supra* note 3.

87. *Shutts*, 105 S. Ct. at 2972-76.

88. *Id.* at 2980.

89. *Id.*

uous situation which will most likely result in considerable confusion in future adjudications of multistate class actions.

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