UIC Law Review

Volume 15 | Issue 1 Article 9

Winter 1982

Chancellor v. Lawrence - Minimum Contacts and the Fiduciary Shield Doctrine, 15 J. Marshall L. Rev. 251 (1982)

Gregory A. Crouse

*CHANCELLOR v. LAWRENCE** MINIMUM CONTACTS AND THE FIDUCIARY SHIELD DOCTRINE

Traditionally, *in personam* jurisdiction[1] was premised on a state's physical control over its territory. In the landmark case of *Pennoyer v. Neff*,[2] the United States Supreme Court held that the exercise of jurisdiction over any defendant required personal service of process while the defendant was within the territorial boundaries of the forum.[3] Because the defendant's presence[4] within the forum was virtually the sole basis[5] for ac-

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* 501 F. Supp. 997 (N.D. Ill. 1980).

1. Jurisdiction, the power to decide a case or controversy, is comprised of two elements: (1) jurisdiction over the subject matter, the power to decide the kind of case before the court; and (2) jurisdiction over the person (*in personam*), the power to decide a case between the parties before the court. Since a plaintiff submits himself to the court's power, the problem with *in personam* jurisdiction is obtaining the power to bind the defendant. D. KARLEN, CIVIL LITIGATION 4-7 (1978). The term "jurisdiction," as used in this casenote, refers only to *in personam* jurisdiction.

2. 95 U.S. 714 (1878). In *Pennoyer*, the Supreme Court affirmed an Oregon Appellate Court decision refusing to enter a default judgment against a nonresident defendant who was not personally served with summons.

3. "[T]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established." *Id.* at 720.

4. "Historically the jurisdiction of courts to render judgment *in personam* is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Although no longer the primary basis for *in personam* jurisdiction, the concept of presence is still a factor in jurisdictional considerations. "A state has power to exercise judicial jurisdiction over an individual who is present within its territory, whether permanently or temporarily." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 28 (1971). The temporary presence of a nonresident within a forum has been held sufficient for the acquisition of jurisdiction. *E.g.*, Grace v. MacArthur, 170 F. Supp. 442 (E.D. Ark. 1959) (service on an airplane flying over the forum held valid on the theory of presence); Darrah v. Watson, 36 Iowa 116 (1873) (personal jurisdiction exercised over nonresident in the forum on business for only a few hours). *But see* Shaffer v. Heitner, 433 U.S. 186 (1977) (unfair to exercise jurisdiction over a defendant's property within the forum when the defendant himself did not have sufficient contacts with the forum). Although dealing with quasi in rem jurisdiction, *Shaffer* suggests that temporary presence at the time of service may be insufficient to constitutionally confer personal jurisdiction.

5. In *Pennoyer*, the Court held that jurisdiction could be conferred by the defendant's consent either given in advance or given after commencement of the action by the defendant's appearance in court to contest on the merits. 95 U.S. at 735.

quiring jurisdiction, a plaintiff's ability to bring an action against a nonresident was curtailed.[6]

Since *Pennoyer*, however, there has been a steady growth in the state's ability[7] to acquire jurisdiction. Despite the requirements of due process,[8] retreat from the *Pennoyer* concept of physical presence has significantly increased the nonresident's amenability to suit.[9] This modification is a judicial response to the modernization of society. As technology advanced and mobility increased, so did the defendant's vulnerability to process.[10]

The trend of expanding personal jurisdiction over nonresidents began with scattered exceptions to the presence oriented doctrine of *Pennoyer*.[11] Jurisdiction based on such factors as the defendant's domicile, business activity, or consent, made

6. Since a state's control ended at its territorial borders, *Pennoyer* held that "[p]rocess from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them." *Id.* at 727. *See* McDonald v. Mabee, 243 U.S. 90 (1917) (personal judgment for money against nonresident defendant ruled void under the fourteenth amendment because the only service was by newspaper publication).

7. Federal jurisdiction follows comparatively similar principles. Service of process in federal actions may be made within the territorial limits of the state in which the district court sits, *or anywhere else that the law of that state permits*. Thus, expansion of *in personam* jurisdiction in state courts also embraces the federal court system. *See* Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) (rather than interpret general federal common law, federal courts must apply the laws of the various states); FED. R. CIV. P. 4(d)-(f); 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1075 (1969 & Supp. 1980).

8. "The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants." Kulko v. California Superior Court, 436 U.S. 84, 91 (1978). Due process requires that the defendant be subject to the personal jurisdiction of the court and that he be given adequate notice of the suit. Personal jurisdiction may be exercised when "minimum contacts" exist between the defendant and the forum. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980). *See generally* F. JAMES & G. HAZARD, CIVIL PROCEDURE §§ 12.1, 12.12 (2d ed. 1977); Hazard, *A General Theory of State Court Jurisdiction*, 1965 SUP. CT. REV. 241; Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569 (1958); notes 13-17, 54-57 and accompanying text *infra*.

9. D. KARLEN, CIVIL LITIGATION 153-56 (1978). *See* note 8 *supra*.

10. *See* C. WRIGHT, LAW OF FEDERAL COURTS § 64 at 302 (3d ed. 1976); 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE §§ 1064-1072 (1969 & Supp. 1980). In Olberding v. Illinois Central R.R., Inc., 346 U.S. 338, 341 (1953), the Supreme Court acknowledged the impact of the automobile on the Court since *Pennoyer* and the need for redress against the possibility of injury by a motorist in our mobile society. *Cf.* Hanson v. Denkla, 357 U.S. 235, 250-51 (1958) (increase in flow of commerce requires increase in ability to obtain jurisdiction over nonresidents).

11. Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 533, 535.

physical presence at the time of service unnecessary.[12] The need for change and cohesion evidenced by the common use of exceptions culminated in the United States Supreme Court decision of *International Shoe Co. v. Washington*.[13]

International Shoe established the contemporary concept of "minimum contacts" with the forum as the basis for jurisdiction over the defendant.[14] The contacts must have such a substantial connection with the forum that the "traditional notions of fair play and substantial justice" are not offended by maintenance of the suit.[15] Today, its liberal and widespread application is well settled[16] despite subsequent judicial limitations.[17]

Over the last fifteen years, however, concurrent with the steady growth in state jurisdictional power, a contrary notion re-

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12. *See, e.g.*, National Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311 (1964) (consent through contractual designation of an in-state agent for service of process); Milliken v. Meyer, 311 U.S. 457 (1940) (domicile); Henry L. Doherty & Co. v. Goodman, 294 U.S. 623 (1935) (doing business); Hess v. Pawloski, 274 U.S. 352 (1927) (prior acts within state as implied consent).

13. 326 U.S. 310 (1945).

14. The Supreme Court stated:

> [D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Id. at 316. Instead of presence, the *International Shoe* Court examined the character of the nonresident's contacts with the forum and the possible infringement upon fair play of compelling him to defend there. While implicitly recognizing a state's interest in providing a forum for its citizens, as well as a plaintiff's interest in the availability of greater latitude in the choice of a forum, the Court focused on the "quality and nature" of the defendant's contacts. *Id.* at 319. *Accord*, Shaffer v. Heitner, 433 U.S. 186 (1977). *Cf.* Minnesota Commercial Men's Ass'n v. Benn, 261 U.S. 140 (1923) (company held not to be doing business in another state because members merely solicited new business there).

15. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). In discussing the due process aspects of the test, the *International Shoe* Court acknowledged the *possible* unreasonableness of defending as a result of the mere presence of a corporate agent, isolated activities, or suits on causes of action unrelated to the in-state activity. *Id.* at 317. *International Shoe*, however, involved a cause of action arising from activities within the state and the Court stated that the privilege of conducting such activities, *in most instances*, requires response to suits connected with them. *Id.* at 319. Contact as minimal as an insurance policy between a state resident and a nonresident company has been held sufficient to confer *in personam* jurisdiction. McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

16. The Supreme Court recently reaffirmed the departure from the *Pennoyer* presence-oriented theory of jurisdiction in Shaffer v. Heitner, 433 U.S. 186 (1977). *Shaffer* held 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. *See generally* Kamp, *Beyond Minimum Contacts: The Supreme Court's New Jurisdictional Theory*, 15 GA. L. REV. 19 (1980); Silberman, *Shaffer v. Heitner: The End of an Era*, 53 N.Y.U. L. REV. 33 (1978). The *Shaffer* pronouncements on jurisdictional standards were re-

stricting jurisdiction over nonresidents has emerged.[18] This doctrine, known as the "fiduciary shield,"[19] precludes jurisdiction over an individual when "predicated upon jurisdiction over

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cently affirmed by the Supreme Court in Rush v. Savchuk, 444 U.S. 320 (1980).

An excellent example of the change from the *Pennoyer* concept has been the legislative enactment of "long-arm" statutes allowing state courts to obtain personal jurisdiction over defendants not within the forum at the time of service. Some states have purported to extend personal jurisdiction to the bounds of their constitutional power as liberalized by the minimum contacts interpretation of due process limitations. Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 533, 537. "[M]ost state legislatures have enacted such statutes with a mind to availing plaintiffs of the benefits of *International Shoe*." Sponsler, *Jurisdiction Over the Corporate Agent: The Fiduciary Shield*, 35 WASH. & LEE L. REV. 349, 349 n.2 (1978) [hereinafter cited as Sponsler].

17. *E.g.*, the Supreme Court decision in Hanson v. Denckla, 357 U.S. 235 (1958), held that the state court jurisdiction over nonresidents was not without limits. After noting the trend of expanding personal jurisdiction over nonresidents, the Court stated it was a "mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Id.* at 251. The *Hanson* Court held that regardless of the ease with which a defendant can defend in a forum, there still must be sufficient contacts between him and the forum before a court may compel him to defend there. *Id.* The Court ruled a state does not acquire jurisdiction "by being the 'center of gravity' of the controversy, or the most convenient location for litigation. [The issue] is resolved . . . by considering the acts of the [defendant]." *Id.* at 254.

In Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), the Court interpreted due process as requiring "systematic and continuous" activity within the forum as a requisite to compelling a nonresident to defend, when the cause of action arose elsewhere. *Id.* at 447-48. The Court in Shaffer v. Heitner, 433 U.S. 186 (1977), stated that contacts consistent with due process require, at the very least, a relationship between the defendant, the forum, and the litigation. *Id.* at 204, 207 and 209. Commingled with direct references to *International Shoe*, the Court stated:

> Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness. . . . Thus, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States . . . became the central concern of the inquiry into personal jurisdiction.

Id. at 204. The *Shaffer* Court further stated that the related acts of the nonresident must be undertaken in a manner purposefully availing himself of the benefits and protections of the forum's laws. *Id.* at 216. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), held that due process requires a defendant's contacts with the forum be "such that he should reasonably anticipate being haled into court there." *Id.* at 297.

18. Sponsler, *supra* note 16, at 350.

19. The term "fiduciary shield" initially appeared in United States v. Montreal Trust Co., 358 F.2d 239, 243 (2d Cir. 1966), *cert. denied*, 384 U.S. 919 (1966). Its acceptance as a term of art became more widespread after appearing in Sponsler, *supra* note 16. *See, e.g.*, Warren v. Dynamics Health Equip. Mfg. Co., 483 F. Supp. 788 (M.D. Tenn. 1980); Grove Press, Inc. v. Central Intelligence Agency, 483 F. Supp. 132 (S.D.N.Y. 1980); Barrett v. Bryant, 290 N.W.2d 917 (Iowa Sup. Ct. 1980); Oxmans' Erwin Meat Co. v. Blacketer, 86 Wis. 2d 683, 273 N.W.2d 285 (1979).

a corporation."[20] The concept developed from the fear of unfairness in asserting jurisdiction over corporate officers based merely upon jurisdiction over the corporation itself.[21] Without the shield doctrine, every officer of a national corporation could be subject to personal jurisdiction in every state simply because the corporation transacted business within the state.[22]

The fiduciary shield doctrine has also been used in determining the personal amenability of corporate agents whose individual contacts with a state satisfy the standards of minimum contacts analysis.[23] When an agent's contacts on behalf of a corporation place him within the reach of a forum's long-arm statute,[24] the corporate principal may be subject to the jurisdiction of that state.[25] Under the fiduciary shield doctrine, however, the agent himself may not be similarly amenable.[26]

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20. Lehigh Valley Indus., Inc. v. Birenbaum, 389 F. Supp. 798, 803 (S.D.N.Y. 1975), *aff'd*, 527 F.2d 87 (2d Cir. 1975). "It is *axiomatic* that jurisdiction over an individual cannot be predicated upon jurisdiction over a corporation. That is to say, an individual's transaction of business within the state solely as an officer of a corporation does not create personal jurisdiction over that individual." *Id.* at 803-04 (emphasis added).

21. *See, e.g.*, Merkel Assoc., Inc. v. Bellowfram Corp., 437 F. Supp. 612, 618 (W.D.N.Y. 1977) ("the purpose of such a 'fiduciary shield' from long-arm jurisdiction is to protect such corporate officers from unreasonable and unjust subjection to personal jurisdiction, not to protect them from liability").

22. *E.g.*, Weller v. Cromwell Oil Co., 504 F.2d 927, 931 (6th Cir. 1974) ("If such suits against officers of national corporations were ever permitted, the individuals could be sued in every state of the union whenever they make telephone calls or write letters to a customer. . . .").

23. *E.g.*, Quinn v. Bowmar Publishing Co., 445 F. Supp. 780 (D.C. Md. 1978) (issue of sufficiency of defendants' contacts need not be considered since individual defendants' visits to the forum were on corporate business). *See* Sponsler, *supra* note 16, at 363.

24. Long-arm statutes are:

> legislative acts which provide for personal jurisdiction, via substituted service of process, over persons or corporations which are nonresidents of the state and which voluntarily go into the state, directly or by agent, or communicate with persons in the state, for limited purposes, in actions which concerns claims relating to the performance or execution of those purposes, *e.g.* transacting business in the state, . . . or selling goods outside the state when the seller knows that the goods will be used or consumed in the state.

BLACK'S LAW DICTIONARY 849 (5th ed. 1979). *See* 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1068 (1969 & Supp. 1980). *See also* note 16 *supra*.

25. The Illinois long-arm statute illustrates the possibility of asserting jurisdiction over a corporation or an individual through an agent's activities. ILL. REV. STAT. ch. 110, § 17(1) (1979). *See* note 45 *infra*.

26. While recognizing that individual agents entered the forum and performed acts related to the cause of action, several courts have still declined to assert personal jurisdiction over them. Wilshire Oil Co. v. Riffe, 409 F.2d 1277 (10th Cir. 1969) (former corporate employee entered forum and allegedly made misrepresentations in a contract bid submitted on behalf of the principal); Lehigh Valley Indus., Inc. v. Birenbaum, 389 F. Supp. 798 (S.D. N.Y. 1975), *aff'd*, 527 F.2d 87 (2d Cir. 1975) (individual's trips to the forum

In interpreting the shield doctrine, courts have generally held that "an individual's transaction of business within the state solely as an officer of a corporation does not create personal jurisdiction over that individual."[27] Even when the individual corporate officer enters the forum, courts have apparently assumed the same possibility of unfairness as where jurisdiction over the officer is based on corporate activity alone.[28] As a result, the doctrine has frequently been invoked to bar jurisdiction over agents[29] whose contacts otherwise sufficiently satisfy minimum contacts analysis, when the contacts with the forum are solely on behalf of the corporation.[30]

When an individual's[31] activities have clearly satisfied the minimum contacts standards of *International Shoe*, a conflict arises if jurisdiction cannot be acquired because of the fiduciary shield doctrine. Both concepts are based on fairness, but the shield doctrine has been allowed to mechanically nullify minimum contacts analysis because the individual's acts were undertaken in a corporate capacity. The conflict is even more

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were deemed unrelated to plaintiff's cause of action); Fashion Two Twenty, Inc. v. Steinberg, 339 F. Supp. 836 (E.D.N.Y. 1971) (business which the individual defendants may have transacted in the forum held transacted in a corporate agency capacity only); Path Instruments Int'l Corp. v. Asashi Optical Co., 312 F. Supp. 805 (S.D.N.Y. 1970) (individual defendant's visits to the forum found to be in accord with his agency relationship with the principal); Yardis Corp. v. Cirami, 76 Misc.2d 793, 351 N.Y.S.2d 586 (N.Y. Sup. Ct. 1974) (court refused to enforce judgment entered in another state holding acts by the individual defendant in the other state were undertaken as an officer of a nonresident corporation). It appears that when jurisdiction is sought over corporate agents on an individual basis, and all of their acts within the forum were solely in a corporate capacity, the corporation will ordinarily insulate the individuals from the court's personal jurisdiction. 3A FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 1296.1 (rev. perm. ed. 1975 & Supp. 1980); 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1069 (Supp. 1980). Thus, the fiduciary shield doctrine may preclude jurisdiction over a corporate agent even though his activities are sufficient to subject the corporate principal to a state court's personal jurisdiction. *See* note 23 *supra*.

27. Lehigh Valley Indus., Inc. v. Birenbaum, 389 F. Supp. 798, 804 (S.D. N.Y. 1975), *aff'd*, 527 F.2d 87 (2d Cir. 1975). *See* notes 20, 26 *supra*.

28. Sponsler, *supra* note 16, at 351.

29. The term "agent" includes corporate officers, but an individual need not hold any special corporate title to fall within the auspices of the fiduciary shield doctrine.

30. *See* note 26 *supra*.

31. *International Shoe* involved a corporate defendant, but evidenced the intent of the Supreme Court to create a standard applicable to the individual as well as the corporate nonresident. International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). This intent was recently affirmed in Shaffer v. Heitner, 433 U.S. 186 (1977) ("the *International Shoe* Court believed that the standards it was setting forth governed actions against natural persons as well as corporations."). 433 U.S. at 204 n.19.

noteworthy in light of the trend of expanding state court jurisdiction over nonresidents.

The discord created by this aspect of the fiduciary shield doctrine's application was recently addressed by a federal district court in *Chancellor v. Lawrence*.[32] In *Chancellor*, the agent's acts within the forum were solely on behalf of the corporation, yet the court declined to apply the fiduciary shield doctrine.[33] In doing so, the court was able to comport with the jurisdictional standards of *International Shoe*, while questioning the underlying assumptions and mechanical use of the shield doctrine in all cases involving corporate agents acting on corporate business. This casenote will analyze the *Chancellor* decision and suggest that the rationale used be adopted in future decisions.

FACTS AND HOLDING OF THE DISTRICT COURT

Janice Chancellor, a twelve-year-old ward of the State of Illinois, was placed in the Meridell Achievement Center (MAC), an incorporated child care complex in Texas.[34] Pursuant to an ongoing general operating agreement with the Illinois Department of Children and Family Services,[35] MAC consistently received and cared for numerous wards of Illinois.[36] Approximately six months after her arrival in Texas, Ms. Chancellor underwent surgery.[37] Prior to surgery the MAC staff in-

32. 501 F. Supp. 997 (N.D. Ill. 1980).

33. *Id.* at 1003-05.

34. The Circuit Court of Cook County, Illinois, Juvenile Division, adjudicated Ms. Chancellor, then twelve years old, a neglected minor and ward of the state. Subsequently, on June 26, 1970, she was placed in the care of the Illinois Department of Children and Family Services (IDCFS). The Guardianship Administrator at IDCFS was appointed her legal guardian. In early 1971, after numerous unsuccessful attempts at placing Ms. Chancellor in private foster homes, IDCFS placed her at MAC. She arrived at MAC on April 6, 1971, accompanied by an IDCFS caseworker, who processed her admission and, on behalf of IDCFS, executed an individual placement agreement for her care. *Id.* at 999.

35. The agreement provided for monthly reimbursement, at a per diem rate, for the daily care of IDCFS placements during the preceeding month. Officials from MAC traveled to Illinois at least once every year to renegotiate the per diem rate. *Id.* at 999, 1002.

36. Records presented to the district court show that during 1971 over 100 IDCFS children were at MAC at any one time. Consequently, IDCFS paid MAC approximately $800,000 for services rendered during this period. *Id.* at 999.

37. In late 1971, after Ms. Chancellor complained of pain, the possible presence of a calcium "mass" in her abdomen was discovered by MAC's regular outside pediatrician. She was referred to a surgeon in Austin, Texas, who detected signs of ovarian "teratoma." Teratoma is a new and abnormal growth composed of numerous varying kinds of tissue not native to the location in which it occurs. DORLAND'S ILLUSTRATED MEDICAL DIC-

formed her that she was scheduled for an appendectomy. For unexplained reasons, her ovaries and uterus were also removed.[38]

A few months later, unaware of the extent of the operation, she returned to Illinois and discovered the loss of her procreative capacity.[39] As a result, she brought an action for damages in the Federal District Court of Illinois.[40] The suit was brought against various individuals, including former officials from the Texas corporation (MAC defendants).[41] The plaintiff alleged that she was not properly informed of the purpose and extent of the surgery.[42]

A motion to dismiss for lack of *in personam* jurisdiction was filed by the MAC defendants.[43] They alleged that their visits to Illinois for contract negotiations and to attend child care conferences were undertaken strictly on behalf of the corporation.[44]

TIONARY 1549 (25th ed. 1965). Because of the growth's potential malignancy, diagnostic surgery and possible removal of the mass was advised. MAC responded by obtaining consent for the necessary procedures from Ms. Chancellor's legal guardian in Illinois. 501 F. Supp. at 999-1000.

38. On November 23, 1971, exploratory surgery revealed a cyst on plaintiff's right ovary. Subsequent pathological analysis showed that the cyst was benign. 501 F. Supp. at 1000.

39. In May of 1972, Ms. Chancellor was transferred to Chicago State Hospital, a public mental institution in Illinois. While at the institution, she was informed that her ovaries and uterus had been removed. *Id.*

40. Federal subject matter jurisdiction was based on 28 U.S.C. §§ 1331, 1332 and 1343. It was submitted that the court had pendant jurisdiction over the breach of duty and malpractice claims. *Id.* at 999.

41. The MAC defendants included a former administrator, a former assistant administrator, and the chief nurse from MAC. *Id.* at 1000. References to the MAC defendants in this casenote do not include the nurse. The suit against her was dismissed for lack of jurisdiction and improper venue. *Id.* at 1005-06.

42. The underlying controversy was brought under 42 U.S.C. § 1983 alleging violation of plaintiff's rights under the First, Fourth, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution, breach of guardianship duties, professional malpractice and medical malpractice. The six counts alleged were: (1) denial of plaintiff's right to procreate; (2) denial of due process of law; (3) denial of plaintiff's right to treatment; (4) breach of guardianship duties; (5) professional malpractice; and (6) medical malpractice. Counts one through three were directed against all defendants. Counts four and five were directed toward former IDCFS officials and the MAC defendants. Count six was against the physicians. *Id.* at 999-1000. This casenote is concerned with the MAC defendants and their motion to dismiss the counts against them for want of in personam jurisdiction.

43. The nonresident defendants included the physicians who performed the operation as well as the MAC defendants. Both groups moved for dismissal on jurisdictional grounds. *Id.* at 1000. The *Chancellor* opinion included considerable analysis of the jurisdictional issue regarding the physicians before dismissing the counts against them for lack of personal jurisdiction and improper venue. *Id.* at 1000-02.

44. Both individuals had substantially the same contacts with the forum. Each attended national child care conferences in Illinois. On these occasions, they both might have met with IDCFS officials to discuss the

Therefore, they argued that jurisdiction was precluded by operation of the fiduciary shield doctrine. The district court disagreed and found the MAC defendants amenable to suit under the Illinois long-arm statute.[45]

The court noted that although the weight of authority was in the defendants' favor, to automatically follow precedent by applying the doctrine would conflict with the standards of fairness governing the question of jurisdiction.[46] The court emphasized the need for a flexible case by case examination of the fairness standards before exerting jurisdicition.[47] Consequently, the court held that when the activities of nonresident individuals are of a nature that would normally subject them to the personal

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general status of various IDCFS children placed at MAC. One defendant may have had telephone conversations with IDCFS employees in Illinois to arrange these meetings. He also once traveled to Illinois to pick up some MAC residents who ran away from the center.

The general operating agreement between MAC and IDCFS was signed and perhaps negotiated by a MAC defendant. Both defendants traveled to Illinois, at least annually, to renegotiate the daily rate of payment specified in the contract. One executed the individual agreement pursuant to which plaintiff was admitted to MAC. *Id.* at 1002.

45. Because plaintiff's brief was unclear, the *Chancellor* court presumed she intended to assert jurisdiction under the "transacting business within the state" provision of the Illinois long-arm statute. *Id.* at 1000. Pertinent provisions of the statute read as follows:

> (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any such acts:
>
> (a) The transaction of any business within this State;
>
> . . . .
>
> (2) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.
>
> (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.
>
> (4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

ILL. REV. STAT. ch. 110 §§ 17(1)(a), 17(2), 17(3), 17(4) (1979).

To determine whether to assert in personam jurisdiction, statutory and constitutional issues must be considered. Both aspects were considered simultaneously in *Chancellor* because the legislative intent of the Illinois long-arm statute is to extend jurisdiction to the limits of due process. O'Hare Int'l Bank v. Hampton, 437 F.2d 1173, 1176 (7th Cir. 1971); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

Although personal jurisdiction was allowed, the MAC defendants were dismissed because of improper venue. Chancellor v. Lawrence, 501 F. Supp. 997, 1006 (N.D. Ill. 1980).

46. 501 F. Supp at 1003.

47. *Id.*

jurisdiction of the forum, fairness dictates that jurisdiction should not be barred merely because the contacts were perpetrated solely on behalf of a corporation.[48]

ANALYSIS

In *Chancellor*, the court concluded that without the application of the fiduciary shield doctrine the individual defendants would be subject to *in personam* jurisdiction.[49] That conclusion was properly based on the minimum contacts standard of fairness articulated in *International Shoe*.[50] These same principles also guided the *Chancellor* court to except the fiduciary shield doctrine.[51] The court reasoned that, since fairness was the accepted jurisdictional standard, the shield doctrine could not be allowed to defeat the acquisition of jurisdiction over the MAC defendants. Thus, it would not be unfair to compel the defendants to defend in Illinois, even though their contacts with the state were strictly in the interest of a corporation.

The Application of "Minimum Contacts" Analysis

Interpreting the Standard

In holding the MAC defendants subject to the Illinois long-arm statute, the *Chancellor* court interpreted the minimum contacts standard as requiring the balancing of the plaintiff's, the defendant's, and the forum's interests in the suit.[52] While the district court was bound to apply the *International Shoe* standard,[53] judicial history indicates that this standard is subject to

48. *Id.* at 1005.

49. *Id.* at 1003.

50. *Id.* at 1000-03, 1005.

51. *Id.* at 1003.

52. *Id.* at 1001. In *International Shoe*, the Court stated that the relationship between the defendant and the forum must make it "reasonable . . . to defend the particular suit which is brought there." International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945). Implicit in the *International Shoe* Court's emphasis on reasonableness is the understanding that the defendant's interest will be considered in light of other relevant factors. These factors include 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 interests of the several states in furthering fundamental substantive social policies." World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286, 292 (1980). *See generally* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 533; Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587, 593-613 (1979).

53. *See* note 16 and accompanying text *supra*.

subtle differences in interpretation.[54] Though the term "minimum contacts" suggests that physical contacts with the forum are important, many courts have not treated them with much significance.[55] Rather, a complex process of balancing various interests relevant to overall fairness has frequently been used.[56]

Among the interests commonly analyzed by courts are the expectations of the public, procedural convenience and the regulatory concerns of the various states.[57] Such analysis may lead

54. Casad, *Shaffer v. Heitner: An End to Ambivalence in Jurisdictional Theory?*, 26 U. KAN. L. REV. 61, 65 (1977).

55. In Hanson v. Denckla, 357 U.S. 235 (1958), a Florida resident willed part of a trust set up in Delaware to her daughters. A suit over the trust ensued. Florida was the home of the principal contenders for the money. The state had an interest in the controversy since the will was probated there and it was also a reasonably convenient forum for all litigants. The Court invalidated Florida's assertion of jurisdiction, however, indicating that the Delaware trustee had insufficient contacts with Florida to submit itself to Florida jurisdiction. *Id.* at 251-52. Thus, some courts have apparently understood the *International Shoe* standard as requiring their analysis to focus on each defendant's physical or business connections with the forum.

56. The emphasis of different factors does not mean that courts have intentionally followed two different theories in applying the *International Shoe* test. Most courts have quoted the same passages from that case. *See* note 14 *supra*. The difference is in the way those passages have been interpreted. Casad, *Shaffer v. Heitner: An End to Ambivalence in Jurisdictional Theory?* 26 U. KAN. L. REV. 61, 64-65 (1977). *See* Kamp, *Beyond Minimum Contacts: The Supreme Court's New Jurisdictional Theory*, 15 GA. L. REV. 19, 31-32 (1980).

57. In Gray v. American Radiator & Standard Sanitary Corp., a nonresident corporation was subjected to Illinois jurisdiction in a suit for tort damages. The plaintiff's injuries were caused by the failure of a valve which the defendant corporation manufactured in Ohio. The valve was purchased by a manufacturer in Pennsylvania and incorporated into a hot water heater. The boiler was subsequently sold to a consumer in Illinois, where it exploded and injured the plaintiff. Jurisdiction was found by weighing various factors: the Illinois location of the explosion; the lack of inconvenience to the defendant; the Illinois location of witnesses; the prevalence of Illinois substantative law; the defendant's knowledge of the product's widespread distribution; and the defendant's enjoyment of the benefits and protections of Illinois law. 22 Ill. 2d 432, 176 N.E.2d 761 (1961). *See also* In-Flight Devices Corp. v. Van Dusen Air, 466 F.2d 220 (6th Cir. 1972) (no particular type of physical contact required as jurisdictional prerequisite); Jack O'Donnell Chevrolet, Inc. v. Shankles, 276 F. Supp. 998 (N.D. Ill. 1967) (indirect contact can be as indicative of substantial involvement as a personal visit). For discussions of this jurisdictional approach *see generally* Ehrenzweig, *From State Jurisdiction to Interstate Venue*, 50 OR. L. REV. 103 (1971); Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens*, 65 YALE L. J. 289 (1956); Traynor, *Is This Conflict Really Necessary?*, 37 TEX. L. REV. 657 (1959). *But see* Kamp, *Beyond Minimum Contacts: The Supreme Court's New Jurisdictional Theory*, 15 GA. L. REV. 19 (1980). Kamp suggests that the Supreme Court decisions in World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286 (1980), and Rush v. Savchuk, 444 U.S. 320 (1980), although reflective of prior judicial analysis, have created a new approach to jurisdictional theory. Contradicting the modern state court trend favoring the plaintiff, the new theory looks only to the relation between the forum and the defendant. Kamp interprets these

to the proper exercise of jurisdiction when the determinative factors favor suit within a forum, even if the defendant's connection with the forum is somewhat remote. The *Chancellor* approach of looking broadly to the fairness of requiring the defendants to defend in Illinois was a proper interpretation of the *International Shoe* standard.

The Determinative Factors

The activities of the MAC defendants were sufficient to connect them with the forum and the litigation.[58] In addition, the state's and plaintiff's interest in Illinois litigation were unusually strong.[59] Thus, the results of the balancing analysis led to the determination that personal jurisdiction should be exercised over the individual defendants. An examination of the court's reasoning shows that the defendants' visits to Illinois to make contracts and attend conferences,[60] and plaintiff's status as a ward of the State of Illinois[61] were the determinative factors.

The refusal to allow minimum contacts analysis to be automatically negated by the fiduciary shield theory distinguishes *Chancellor* from the majority of cases where the theory has been considered. When an agent enters a forum and transacts business in a manner satisfying minimum contacts standards, it is not unfair to force him to answer for his actions in that forum. Even though acting officially, the agent has still entered a state's legitimate sphere of concern and is furthering his own interests

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cases as going beyond "minimum contacts" to more closely examine state sovereignty and considerations of convenience and reasonableness. Thus, jurisdiction may be denied even if there is little or no inconvenience to the defendant in the foreign litigation.

58. Chancellor v. Lawrence, 501 F. Supp. 997, 1002-03 (N.D. Ill. 1980). Although the contacts of the individual defendants in *Chancellor* are arguably tenuous, it must be remembered that the ultimate jurisdictional ruling was the result of balancing relevant interests. Therefore, the contacts themselves may be a somewhat secondary factor when weighed against the interests of the parties and the forum. *See* notes 55-57 and accompanying text *supra*. The treatment of the *Chancellor* considerations on minimum contacts is cursory because the primary concern of this casenote is the conflict between the results of minimum contacts analysis and prior results through use of the shield doctrine. It is important to note, however, that the *Chancellor* analysis of the contacts mentioned all of the restrictions set forth by the United States Supreme Court. *See* note 17 *supra*. Consequently, *Chancellor* does not stand for the proposition that every agent performing duties for another within a forum is necessarily subject to that forum's jurisdiction. Rather, the decision shows that when nonresident agents purposefully enter a forum, and thereby invoke its benefits and protections, they *may* be subject to that state's jurisdiction in foreseeable litigation related to such activities.

59. Chancellor v. Lawrence, 501 F. Supp. 997, 1003 (N.D. Ill. 1980).

60. *Id.* at 1002.

61. *Id.* at 1003.

by fulfilling employment responsibilities. The fiduciary shield doctrine should not be invoked because the purpose for the development of the doctrine—to prevent the unfair assertion of jurisdiction over corporate officers—would not be served under today's accepted jurisdictional standards.

Excepting the "Fiduciary Shield" Doctrine

Having concluded that the MAC defendants performed acts sufficient to subject them to jurisdiction under the Illinois long-arm statute, the *Chancellor* court next considered the application of the fiduciary shield doctrine.[62] The district court considered the results of its analysis[63] and a court's obligation to separately examine each fact pattern when ascertaining jurisdictional extent.[64] Holding the shield doctrine inapplicable, the court factually distinguished most of the defendants' cited authority[65] and declined to follow the cases that were apparently apposite.[66]

Distinguishing Divergent Fact Patterns

In distinguishing purported landmark cases supporting the shield doctrine,[67] the *Chancellor* court made an elementary, but critical, statement. The court held that the application of minimum contacts analysis to the distinguished cases revealed that the contacts between the agents and the forum were alone in-

62. The *Chancellor* court first noted the lack of controlling precedent from the Seventh Circuit. *Id.* at 1004.

The fiduciary shield doctrine has not been adopted by all jurisdictions. Until it was discussed in Wilshire Oil Co. v. Riffe, 409 F.2d 1277 (9th Cir. 1969), the shield theory was only recognized by New York courts. The origin and development of the theory is analyzed in detail in Sponsler, *supra* note 16.

63. *See* notes 58-59 and accompanying text *supra*.

64. Chancellor v. Lawrence, 501 F. Supp. 997, 1003 (N.D. Ill. 1980). There is no specific formula or rule of thumb for determining whether there are sufficient minimum contacts short of ascertaining what is fair and reasonable in the circumstances of a particular case. World-Wide Volkswagen v. Woodson, 444 U.S. 286, 292 (1980); Hutter N. Trust v. Door County Chamber of Commerce, 403 F.2d 481, 484 (7th Cir. 1968).

65. Chancellor v. Lawrence, 501 F. Supp. 997, 1004 (N.D. Ill. 1980).

66. *Id.* at 1005.

67. The *Chancellor* court stated that many of the cases cited by the defendants were factually distinguishable. To show examples of the differences, the district court specifically discussed the decisions in Weller v. Cromwell Oil Co., 504 F.2d 927 (6th Cir. 1974); Wilshire Oil Co. v. Riffe, 409 F.2d 1277 (10th Cir. 1969); Idaho Potato Comm'n v. Washington Potato Comm'n, 410 F. Supp. 171 (D. Idaho 1976); Chancellor v. Lawrence, 501 F. Supp. 997, 1004 (N.D. Ill. 1980).

sufficient to confer jurisdiction.[68] Therefore, regardless of whether the individual defendants acted in their own interests or solely as corporate agents, jurisdiction could not have been asserted. By distinguishing divergent fact patterns, the *Chancellor* court recognized the need to treat varying fact patterns differently when deciding whether to apply the fiduciary shield doctrine.[69]

Two principle fact patterns dominate the cases in which the theory of the fiduciary shield has been discussed.[70] In the first pattern, the agent himself has insufficient contacts with the forum to sustain jurisdiction. The agent, however, is affiliated with a corporation that does have the requisite contacts to invoke jurisdiction.[71] The second pattern, where the agent enters the forum in the interest of the corporation and individually generates contacts sufficient for the state to acquire personal jurisdiction over him is analogous to *Chancellor*.[72]

The *Chancellor* court did not feel the second mentioned pattern subjected corporate agents to the same inherent possibility of unfairness as the first. Courts discussing the fiduciary shield doctrine have generally not made this distinction.[73] The distinction, however, must be drawn. When an agent enters a forum for reasons related to the litigation or otherwise acts in a manner subjecting himself to the forum's long-arm statute, regardless of the contacts of the corporate principal, the application of the shield doctrine would create a situation anomalous to contemporary policy. The mechanical application of the shield doctrine, based on corporate status, allows nonresident agents to enter a state and significantly affect the lives of citizens therein, knowing that the state could not force them to remain and answer for their actions should a conflict arise.

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68. The *Chancellor* court stated that *Weller* and *Idaho* were distinguishable because there the individual defendants did not enter the forum. *Wilshire* was distinguished because its holding was partially based on a lack of nexus between the individual defendants' contacts with the forum and the litigation. 501 F. Supp. at 1004.

69. Sponsler suggests that judicial analysis in cases discussing the fiduciary shield has generally been deficient in treating divergent fact patterns alike. He contends that unthinking reliance on prior case law has caused the doctrine to be applied in situations where the facts would not allow the assertion of jurisdiction under minimum contacts analysis. Consequently, a theory conflicting with existing minimum contacts standards has developed. Sponsler, *supra* note 16, at 350-62.

70. *Id.* at 350-51.

71. *Id.*

72. *Id.* at 351.

73. *Id.* at 361-62.

Failure to Critically Examine Prior Case Law

The recognition of the need to distinguish disparate factual situations makes *Chancellor* significant. A closer comparison of prior cases, however, indicates that these previous decisions were not as inconsistent with the district court's rationale as its opinion might imply. The *Chancellor* court specifically labeled *Weller v. Cromwell Oil Co.*,[74] *Idaho Potato Commission v. Washington Potato Commission*[75] and *Wilshire Oil Co. v. Riffe*[76] as "ill-suited" precedent because the contacts of the individual defendants were alone insufficient to confer jurisdiction.[77] The *Chancellor* court should have gone farther and pointed out the significance of the minimum contacts analysis discussed in each of those decisions. Had it done so, the district court could have raised serious doubt as to the actual basis for the *Weller*, *Idaho* and *Wilshire* holdings. Simultaneously, the *Chancellor* rationale of using the *International Shoe* fairness test as grounds for creating an exception to the fiduciary shield doctrine would have been supported. The *Chancellor* court, however, was content with factual distinctions in lieu of critical examination and discussion, thereby demonstrating a probable unwillingness to directly challenge the appropriateness of the shield doctrine's prior use.

Weller v. Cromwell Oil Co. was a breach of contract and antitrust action brought against a nonresident corporation and two of its officers. The plaintiff claimed that the individual defendants made false representations to him in telephone conversations and in advertising literature sent through the mail. There was no evidence that the individual defendants committed any act or omission within the forum. The corporation, however, was transacting business in the forum through authorized agents.

Weller reveals that its decision was actually based on the unreasonableness of asserting jurisdiction over nonresident individuals who committed no act or omission within the forum.[78]

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74. 504 F.2d 927 (6th Cir. 1974).
75. 410 F. Supp. 171 (D. Idaho 1976).
76. 409 F.2d 1277 (10th Cir. 1969).
77. *See* note 68 *supra*.
78. The *Weller* court stated:

> There was no evidence that the individual defendants committed any act or omission in the state . . . which injured the plaintiff.
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> . . . .
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> We have serious doubt whether the activities of the corporate officers . . . are sufficient so as to make it reasonable and just, consistent with traditional notions of fair play, and in conformity with due process requirements . . . that the individuals be subjected to suit in [the forum] arising out of such activities.

Weller v. Cromwell Oil Co., 504 F.2d 927, 931 (6th Cir. 1974).

Realizing the tenuousness of the contacts between the corporate officers and the forum, the *Weller* plaintiff based his main argument on the theory that other corporate agents acting within the forum were the personal agents of the absent defendants.[79] This argument failed.[80] The fairness of compelling the officers to defend in the forum was determined by examining their individual contacts with the state.[81] The *Weller* court cited the general language of the fiduciary shield doctrine, but actually decided the case through use of minimum contacts analysis. Thus, jurisdiction might have been asserted if the defendants had acted in a manner reasonably placing them within the reach of the forum's long-arm statute.

In *Idaho Potato Commission v. Washington Potato Commission*, an Idaho state agency sued a Washington state agency for trademark infringement. The plaintiff attempted to secure jurisdiction by way of an advertising scheme employed by the defendants in Idaho. The *Idaho* holding emphasized that the defendant's activities were outside the forum.[82] Furthermore, the court doubted whether the individual corporate directors reasonably could have anticipated their activities would render them amenable to suit in another state.[83] The opinion also posed a hypothetical situation where personal jurisdiction would be acquired over both a nonresident truck driver and his employer for the tort of the driver while in the forum.[84] The court's analysis of the defendants' expectations and the truck hypothetical indicates that the results in *Idaho* might have been reversed had the individual defendants entered the forum.[85] Although conceding the inability to conceptually distinguish the truck hypothetical,[86] the court nevertheless cited the broad lan-

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79. *Id.* at 930.

80. *Id.*

81. *See* note 78 *supra*.

82. Idaho Potato Comm'n v. Washington Potato Comm'n, 410 F. Supp. 171, 182 (D. Idaho 1976).

83. This was due to the defendants' knowledge of and reliance on a Washington statute indicating that liability flowing from their performance as directors would be deemed that of the Commission. *Id.*

84. *Id.*

85. *See* Sponsler, *supra* note 16, at 358-59.

86. The court stated:

> Conceptually, it is difficult to distinguish the facts in this case from the . . . hypothetical factual situation.
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> . . . .
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> [The resulting liability from the truck driver's act] flows from the commission of a tortious act within the purview of [the forum's] long-arm statute. Comparing the facts of this case with the hypothetical . . . both the members and [the truck driver] can be said to have committed acts from which a cause of action has arisen.

Idaho Potato Comm'n v. Washington Potato Comm'n, 410 F. Supp. 171, 182 (D. Idaho 1976).

guage of the fiduciary shield doctrine.[87] Consequently, the holding has frequently been interpreted to mean that activities solely on behalf of a corporation preclude jurisdiction over corporate agents, regardless of whether their contacts with the forum would alone support jurisdiction.

Idaho was actually decided through the use of minimum contacts analysis and not the fiduciary shield doctrine.[88] The individual defendants could not anticipate suit in the forum and therefore, in fairness, the court could not compel them to defend there.[89] Jurisdiction might have been consistent with due process had the *Idaho* defendants entered the forum and availed themselves of the benefits and protections of state law. Hence, the *Chancellor* logic was consistent with *Idaho*.

An examination of *Wilshire Oil Co. v. Riffe* also reveals that this decision was not based solely on the application of the fiduciary shield doctrine.[90] Wilshire Oil Company brought an action against three former employees to recover expenditures incurred in antitrust litigation caused by the actions of the employees. The individual defendants did enter the forum, but solely on corporate business. Although the shield theory of immunity was recognized,[91] the court was not clear as to whether a lack of connection between the defendants' contacts with the forum and the litigation, the fiduciary shield doctrine, or a combination of the two, was responsible for the ruling to preclude the exercise of jurisdiction.[92]

The *Chancellor* court made no mention of any ambiguity in *Wilshire*. A footnote in the *Chancellor* decision, however, questioned the widespread use of *Wilshire* as precedent supporting

87. *Id.* at 180-81.

88. *See* notes 82-86 and accompanying text *supra*.

89. *Id.*

90. Sponsler, *supra* note 16, at 357.

91. Wilshire Oil Co. v. Riffe, 409 F.2d 1277, 1280-81 (10th Cir. 1969).

92. The court held:

> Thus, our previous discussion of the fiduciary shield precluding an exercise of personal jurisdiction over a corporate agent applies with equal force here. Nonetheless, we do not deem it necessary to decide the matter solely on that basis. The interaction of the inherent weakness of the contacts and the strained causal connection with the underlying cause of action, operates in conjunction with the fact of the agency relationship to require, in conformity with notions of fair play and substantial justice, that this court refrain from compelling a corporate officer to answer in courts located in a state foreign to both the agent and his corporation.

Id. at 1282-83.

the shield doctrine.[93] Tentative language addressing the fiduciary shield doctrine was pointed out,[94] but limited treatment of this issue in a footnote suggests the *Chancellor* court's unwillingness to examine and directly challenge cases cited in favor of the jurisdictional shield.

While the scrutiny and challenge of early cases often cited as supporting the fiduciary shield theory may have seemed unnecessary in *Chancellor*, the need for courts to do so is apparent in light of the foregoing analysis and modern jurisdictional policy. Recognizing, as the *Chancellor* court did, that the mechanical application of the shield doctrine's broad language can lead to injustice,[95] courts must insure that it is applied only in the proper context. The *Chancellor* court was presented with such an opportunity but avoided the issue.

Failure to Follow Appropriate Authority

The *Chancellor* court declined to follow cases it was unable to distinguish.[96] In prior cases, courts shielded individual de-

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93. Chancellor v. Lawrence, 501 F. Supp. 997, 1004-05 n.4 (N.D. Ill. 1980).

94. In its discussion of Quinn v. Bowman Publishing Co., 445 F. Supp. 780 (D.C. Md. 1978), the *Chancellor* court stated:

> The *Quinn* case is one of many which cite to *Wilshire Oil* . . . for the proposition at issue here. . . . [T]he Court is not convinced that *Wilshire Oil* is as strong a precedent as one might be led to believe from the subsequent reliance on the case by other courts. Although *Wilshire Oil* cited other cases applying the rule, 409 F.2d at 1281, n.8, the court never actually decided the issue, but, rather, based its decision on other grounds. The court stated:
>
> Furthermore, the signing of the bid form, and for that matter the attendance at the various maintenance lettings, were the acts of Homer Riffe as a corporate employee. As such they were not his personal acts *and seemingly* cannot constitute the transaction of business by Homer Riffe as an individual. . . . *In any event*, it is clear that Wilshire has *failed to prove a sufficient nexus* between the submission of the bid and its claim against Homer Riffe. 409 F.2d at 1281 (emphasis in original).

501 F. Supp. at 1004-05 n.4.

Sponsler also interpreted the *Wilshire* treatment of the fiduciary shield doctrine as tentative. Rather than refer to the matter as "settled," the *Wilshire* court stated in a footnote that "it has been held that" the doctrine shall preclude jurisdiction. Sponsler, *supra* note 16, at 357.

95. As expressed in *Chancellor*:

> A mechanistic application of the rule defendants suggest would, moreover, lead to the anomoly of a corporation being amenable to the jurisdiction of a foreign forum solely due to the egregious conduct of an employee in that forum, while the perpetrator of the wrong is insulated from suit in that jurisdiction. The due process clause does not so require.

Chancellor v. Lawrence, 501 F. Supp. 997, 1005 (N.D. Ill. 1980).

96. *Id.* at 1004. *Chancellor* specifically discussed the apparent applicability of Quinn v. Bowman Publishing Co., 445 F. Supp. 780 (D.C. Md. 1978); Path Instruments Int'l Corp. v. Asahi Optical Co., 312 F. Supp. 805 (S.D.N.Y. 1970). *Id.* at 1004.

fendants from jurisdiction even though they entered the forum on business matters connected with the litigation, and as in *Chancellor*, acted only in a corporation's interests.[97] Instead of mechanically following these cases, the *Chancellor* court properly decided that due process would not be violated by compelling the MAC defendants to defend in Illinois since jurisdiction was based on their activities and not merely upon jurisdiction over the corporation.[98]

Analysis of the development of the shield doctrine casts suspicion on the soundness of decisions invoking its use.[99] Generally, no distinction has been made between the fact pattern in which a corporate agent enters the forum and one in which he does not.[100] Modern jurisdictional policy requires a distinction be made. Compliance with existing jurisdictional standards should prohibit use of the shield doctrine in situations where state jurisdictional power would normally be exercised over the individual.

In situations like *Chancellor*, the need for applying the fiduciary shield doctrine disappears. The purpose of the jurisdictional shield is to prevent a violation of due process through the unfair assertion of jurisdiction over an individual, based only on corporate contacts with the forum.[101] When circumstances present no danger of unfairness to a defendant and therefore no possibility of violating due process, there is no need for individual immunity. In such circumstances the purpose of the shield doctrine would not be served, and its application could be unfair to the plaintiff by denying him the opportunity to sue the wrongdoer in a state where the wrong occurred.

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97. *See* notes 26-30 and accompanying text *supra*.

98. Chancellor v. Lawrence, 501 F. Supp. 997, 1005 (N.D. Ill. 1980). The district court held that the interests of the state and the forum in the suit "strongly militate in favor of sustaining jurisdiction." *Id.* The court further held:

> [Defendants'] contacts with Illinois are sufficiently extensive and amply related to plaintiff's cause of action so that if they were taken in their personal capacities there would be no question but that these individuals are amenable to suit in Illinois. [Therefore,] if substantial justice and fundamental fairness is the standard, the Court cannot accept the conclusion that the mere fact that the defendants' actions were taken in their corporate rather than individual capacities must alter the result.

Id.

99. *See* notes 68-94 and accompanying text *supra*. Courts have "generally failed to differentiate between the issue of substantive liability and the issue of personal jurisdiction." Warren v. Dynamics Health Equip. Mfg. Co., 483 F. Supp. 788, 791 (M.D. Tenn. 1980).

100. *See* note 73 and accompanying text *supra*.

101. *See* notes 21-22 and accompanying text *supra*.

In view of the inability to distinguish all of the authority supporting the shield doctrine, the *Chancellor* court should have indicated that jurisdictions recognizing the immunity provided by the doctrine have also recognized exceptions to it.[102] Courts willing to disregard the shield doctrine and exercise personal jurisdiction over the corporate agent have generally done so on "grounds of fundamental equity and fairness."[103] Therefore, *Chancellor*, at the very least, should have acknowledged that fiduciary shield immunity was penetrable under certain circumstances. Once acknowledged, the court should have then drawn a favorable analogy.

The approach of first citing other exceptions to the doctrine, as a prelude to the possible creation of another exception, was recently taken by a Tennessee federal district court in *Warren v. Dynamics Health Equipment Manufacturing Co.*[104] *Warren* is significant for its adoption of a new, modified statement of the

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102. Like *Chancellor*, other courts have refused to apply the doctrine when it would automatically negate the normal outcome of jurisdictional analysis. *See, e.g.*, Costin v. Olen, 449 F.2d 129 (5th Cir. 1971); Topik v. Catalyst Research Corp., 339 F. Supp. 1102 (D. Md. 1972), *aff'd*, 473 F.2d 907 (4th Cir. 1972), *cert. denied*, 414 U.S. 910 (1973); Maternity Trousseau, Inc. v. Maternity Mart, 196 F. Supp. 456 (D. Md. 1961); Simmons v. Travelers Ins. Co., 295 So. 2d 550 (Ct. App. La. 1974), *writ denied, result found to be correct*, 229 So. 2d 795 (Sup. Ct. La. 1974).

Exceptions to corporate immunity are generally allowed on the alter ego theory. The theory attaches liability to the defendant who has used the corporate form as a means of conducting personal business affairs. Liability is based on the fraud perpetuated on outside parties doing business with the corporation. BLACK'S LAW DICTIONARY 71 (5th ed. 1979). As a result, the corporate shield may be excepted. *See, e.g.*, Dudley v. Smith, 504 F.2d 979 (5th Cir. 1974) (individual defendant owned or controlled the corporation); United States v. Montreal Trust Co., 358 F.2d 239 (2d Cir. 1966), *cert. denied*, 384 U.S. 919 (1966) (if the defendant acted in a fraudulent or criminal manner); Krause v. Hauser, 272 F. Supp. 449 (E.D.N.Y. 1967) (if an individual acts in his own interest rather than that of the corporation).

Some courts have even asserted jurisdiction over the agent predicated merely upon jurisdiction over the corporation. *See* House of Koscot Dev. Corp. v. American Line Cosmetics, Inc., 468 F.2d 64 (5th Cir. 1972) (individual corporate owners used the corporation as their personal agent to transact business within the forum); Holfield v. Power Chem. Co., 382 F. Supp. 388 (D. Md. 1974) (interests of the corporation and the individual were identical); Country Maid, Inc. v. Haseotes, 299 F. Supp. 633 (E.D. Pa. 1969) (corporate form was not adequately maintained); Odell v. Singer, 169 So. 2d 851 (Dist. Ct. App. Fla. 1964) (tortious corporate activity was attributable to the defendant personally).

103. Warren v. Dynamics Health Equip. Mfg. Co., 483 F. Supp. 788, 792 (M.D. Tenn. 1980).

104. 483 F. Supp. 788 (M.D. Tenn. 1980). In *Warren*, the court discussed various exceptions to the fiduciary shield doctrine before ruling that, without other factors supporting the disregard of the corporate shield, the mere fact that an individual owned all or almost all of the stock did not compel such action. 483 F. Supp. at 792.

fiduciary shield doctrine as noted by modern commentators.[105] The court in *Warren* defined the shield doctrine as one "which holds that jurisdiction over the individual officers and employees of a corporation may not be predicated merely upon jurisdiction over the corporation *absent activities by the individuals sufficient to subject them to a state's long arm.*"[106] As a result, *Chancellor* could become part of the foundation for a new line of case law compelling the reexamination and limitation of the fiduciary shield theory.

CONCLUSION

Chancellor illustrates the possible conflict between results obtained by minimum contacts analysis and the results obtained through the mechanical application of the fiduciary shield doctrine. The consequent inability to systematically apply minimum contacts standards creates the danger of inconsistent and unfair judicial decisions. While the total demise of the shield doctrine is undesirable, *Chancellor* indicates the need for modification.

The holding in *Chancellor* is significant because it creates doubt as to the appropriateness of the shield doctrine's prior use and interpretation. The decision's impact, however, remains questionable because courts have traditionally been reluctant to create exceptions to fiduciary shield immunity.[107] Consequently, a sizable body of case law allowing the individual agent to be subject to personal jurisdiction has not evolved.[108]

Perhaps the *Chancellor* court was outraged by a disturbing and embarassing factual situation and sought to extend maximum protection to a resident plaintiff. The unique facts,[109] coupled with the lack of force of the court's pronouncements on jurisdiction,[110] could make the decision best viewed as one of policy. Hence, the *Chancellor* holding could be tantamount to saying that it is the policy of this court, in this situation, not to permit the fiduciary shield doctrine to mechanically nullify min-

105. *See, e.g.*, 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1069 (Supp. 1980); Sponsler, *supra* note 16.

106. Warren v. Dynamics Health Equip. Mfg. Co., 483 F. Supp. 788, 791 (M.D. Tenn. 1980) (emphasis added).

107. *Id.* at 793.

108. *Id.*

109. *See* notes 34-39 and accompanying text *supra*.

110. In *Chancellor* the MAC defendants filed a motion to dismiss based on both jurisdictional and venue objections. The district court decided both issues in the same opinion. After engaging in an elaborate discussion of the jurisdictional aspects that led to writing this casenote, the court swiftly nullified the assertion of jurisdiction by holding that the requirements for federal venue were not satisfied. *See* note 45 *supra*.

imum contacts analysis. Despite such an interpretation, the questions raised by the district court should cause other courts to reevaluate the use of the shield doctrine. As a result, nonresident corporate agents, who once enjoyed the jurisdictional shield that acting officially provided, could now find themselves less immune to suit.

Gregory A. Crouse