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DeJames v. Magnificence Carriers, Inc.: Examining the Limitations on Personal Jurisdiction in Federal Court, 15 J. Marshall L. Rev. 707 (1982)

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*DeJAMES v. MAGNIFICENCE CARRIERS, INC.**: EXAMINING THE LIMITATIONS ON PERSONAL JURISDICTION IN FEDERAL COURT

Our judicial forums are constitutionally limited in exercising personal jurisdiction[1] over a foreign defendant[2] by the restrictions of the due process clause of the fifth and fourteenth amendments.[3] In *DeJames v. Magnificence Carriers, Inc.*,[4] the Court of Appeals for the Third Circuit was given an opportunity to analyze the parameters of personal jurisdiction within "our

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* 654 F.2d 280 (3d Cir. 1981).

1. Jurisdiction, the power to decide a case or controversy between two parties, is comprised of both jurisdiction over the subject matter and jurisdiction over the person. Jurisdiction over the person relates to the power to decide a case between the parties before a court. Since a plaintiff submits himself to the power of a court by filing suit, the obstacle to jurisdiction is obtaining the power to bind the defendant. D. KARLEN, CIVIL LITIGATION 4-7 (1978). For convenience, the term "jurisdiction" as used in this article refers only to jurisdiction over the person (personal jurisdiction).

A court must have jurisdiction over both the subject matter and the person. It must also be competent to adjudicate the matter, i.e. it must have proper venue, and there must be valid service of process in order to provide sufficient notice of the suit to the defendant. *See* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). *See generally* Barrett, *Venue and Service of Process in the Federal Courts—Suggestions for Reform*, 7 VAND. L. REV. 608 (1954).

2. Ordinarily, a foreign corporation is one which is not incorporated under the laws of the forum which is attempting to exercise jurisdiction. For the purposes of this article, however, the term "foreign corporation" will be synonymous with the term "alien corporation," meaning not incorporated under the laws of the United States.

Foreign corporations are considered "persons" under the due process clauses of both the fourteenth and fifth amendments. Galvan v. Press, 347 U.S. 522 (1954) ("aliens cannot be deprived . . . of life, liberty or property without due process of law").

3. U.S. CONST. amends. V, XIV. These amendments provide that no person may be deprived of life, liberty or property without due process of law. More commonly, these portions of the amendments are known as the "due process" clauses.

The due process clause of the fifth amendment limits the federal government's exercise of its sovereign power. *See, e.g.*, Mariash v. Morrill, 496 F.2d 1138 (2d Cir. 1974). *See also infra* note 62. *See generally* Green, *Federal Jurisdiction In Personam of Corporations and Due Process*, 14 VAND. L. REV. 967 (1961). In contrast, the due process clause of the fourteenth amendment limits the various states in their exercise of sovereign power. *See, e.g.*, F.T.C. v. Compagnie De Saint-Gobain Pont a Moussan, 636 F.2d 1300, 1318-19 (D.C. Cir. 1980). *See generally* Casad, Shaffer v. Heitner: *An End to Ambivalence in Jurisdictional Theory?*, 26 U. KAN. L. REV. 61 (1977); Kurland, *The Supreme Court, the Due Process Clause, and the In Personam*

Federalism"[5] by deciding how a foreign defendant may become constitutionally amenable to suit in a federal court.[6] The court first considered whether the foreign defendant could be amenable to suit based on its contact with the state in which the district court sits.[7] Alternatively, the court considered whether the foreign defendant's contacts with the United States could be aggregated to form a basis for personal jurisdiction.[8] In deciding these issues, the *DeJames* court chose to employ restrictive, traditional methods of jurisdictional analysis.[9]

Jurisdiction of State Courts, 25 U. CHI. L. REV. 569 (1958); Silberman, Shaffer v. Heitner: *The End of an Era*, 53 N.Y.U.L. REV. 33 (1978).

These amendments have been interpreted to protect individuals against arbitrary governmental interference. Thus, the guarantee afforded by due process is the *right* to fair procedure whenever life, liberty or property is at stake. Although the courts have struggled to define the requirements of due process, they have been only moderately successful. The latest pronouncement by the Supreme Court regarding 14th amendment due process analysis allows personal jurisdiction to be exercised when a defendant has such purposeful minimum contacts with the forum that it is fair to compel him to defend and that the exercise of jurisdiction will not impinge on the sovereignty of the sister states. World-Wide Volkswagen v. Woodson, 444 U.S. 280, 291 (1980). *See generally* E. JAMES & G. HAZARD, CIVIL PROCEDURE §§ 12.1, 12.2 (2d ed. 1977); C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL §§ 1064-1073 (1969 & Supp. 1979).

4. 654 F.2d 280 (3d Cir. 1981).

5. Younger v. Harris, 401 U.S. 37, 44 (1971) (Black, J., writing for the majority, acknowledged the unique balance of judicial power within "our Federalism").

6. The *DeJames* court examined two ways in which a foreign defendant may be called to appear in federal court: first, through contacts with the state in which the district court sits, recognizing the due process clause of the fourteenth amendment as a limitation upon the exercise of jurisdiction; second, through contacts aggregated throughout the United States (national contacts), recognizing that the due process clause of the fifth amendment normally limits the exercise of jurisdiction. 654 F.2d 280, 283 (3d Cir. 1981).

7. *Id.* at 283-84. *See infra* notes 24-42 and accompanying text.

8. *Id.* at 286. *See infra* notes 44-82 and accompanying text.

9. Less restrictive and more commercially realistic approaches to jurisdiction have developed to meet the inadequacies of traditional jurisdictional analysis. The progressive methods discussed in this article, the "national contacts" and "stream of commerce" theories, were expressly discussed in *DeJames*. *See infra* notes 14 & 27-33 and accompanying text.

The traditional notions of jurisdictional analysis are derived from the landmark cases of Pennoyer v. Neff, 95 U.S. 714 (1877) and International Shoe Co. v. Washington, 326 U.S. 310 (1945). In World-Wide Volkswagen v. Woodson, 444 U.S. 280 (1980), the Supreme Court enmeshed the *Pennoyer* power theory of jurisdiction, which requires a defendant to be physically present within a forum, with the *International Shoe* theory which requires that the defendant be afforded fundamental fairness by analyzing the quality and nature of a defendant's contacts or ties with the forum to determine if jurisdiction exists. *See generally* Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation*, 75 NW. U. L. REV. 1112 (1981); Comment, *Federalism, Due Process, and Minimum Contacts*: World-Wide Volkswagen Corp. v. Woodson, 80 COLUM. L. REV. 1341 (1980).

The foreign defendant, Hitachi Shipbuilding and Engineering (Hitachi), refurbished a vessel in Japan under contract with the other Japanese defendants.[10] The plaintiff, Joseph DeJames, was seriously injured while working aboard the refurbished vessel while it was moored in a New Jersey harbor. As a result of his injuries, DeJames brought an admiralty[11] action in New Jersey federal court. DeJames alleged that his injury was caused by Hitachi's defective refurbishing of the vessel. Hitachi moved to dismiss the complaint for lack of personal jurisdiction and insufficient service of process. The district court granted the motion to dismiss.[12]

The court of appeals affirmed the district court and determined that Hitachi's single contact with New Jersey was too attenuated to support jurisdiction consistent with the due process clause of the fourteenth amendment.[13] The *DeJames* court then considered whether Hitachi's contacts with the United States could be aggregated to form a basis for jurisdiction. In analyzing this "national contacts" theory,[14] the court noted that the major

10. Hitachi, a subsidiary of Hitachi International Corporation, is a Japanese corporation with its principal place of business in Japan.

In January of 1976, Hitachi began converting the vessel at its shipyard in Osaka, Japan, under an informal agreement with the ship's charterer. In February 1976, a formal contract was formed for the conversion work with the other Japanese defendants, Magnificence Carriers, Inc., Venture Shipping (Managers Ltd.) and Nippon Yisen Kaisha, the charterers of the vessel Magnificente Venture, upon which DeJames alleges he was injured. Pursuant to this contract, Hitachi converted the vessel from a bulk carrier to a car carrier. DeJames v. Magnificence Carriers, Inc., 491 F. Supp. 1276, 1277 (D.N.J. 1980).

11. When a plaintiff alleges that the faulty design of a vessel caused his injury, the action will lie in admiralty. Pan-Alaska Fisheries, Inc. v. Marine Constr. & Design Co., 565 F.2d 1129, 1135 (9th Cir. 1977); Jig the Third Corp. v. Puritan Marine Ins. Underwriters Corp., 519 F.2d 171, 175 (5th Cir. 1975); Sieraki v. Seas Shipping Co., 149 F.2d 98, 99 (3d Cir. 1945), *aff'd*, 328 U.S. 85 (1946). *See generally* McCune, *Maritime Products Liability*, 18 HASTINGS L. J. 831 (1967). Federal courts have original and exclusive jurisdiction in admiralty actions under 28 U.S.C. § 1333 (1976). Art. III, § 2 of the Constitution provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction.

12. DeJames v. Magnificence Carriers, Inc., 491 F. Supp. 1276, 1284 (D.N.J. 1980).

13. As recently construed by the Supreme Court in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 280 (1980), fundamental fairness to the defendant and preserving the co-equal sovereignty of the states are considered the duel precepts embodied in the due process clause of the fourteenth amendment. *See* Comment, World-Wide Volkswagen Corp. v. Woodson: *Minimum Contacts in a Modern World*, 8 PEPPERDINE L. REV. 783 (1981). *See also infra* notes 23-29 and accompanying text.

14. The aggregation of all contacts, ties or connections a person or corporation acquires with the United States is known as the "national contacts" theory. These contacts are used as the basis for determining jurisdiction over a foreign defendant. The minimum contacts analysis adopted by the Supreme Court in *International Shoe* is applied by analogy.

obstacle to wide-spread support was the inability to effect valid service of process.[15] Absent specific congressional authorization in admiralty actions,[16] the only valid methods of service of process required the use of Federal Rule of Civil Procedure 4(e) or (i) in conjunction with a state long-arm statute[17] or a "wholly federal means" to provide authorization.[18]

A "wholly federal means" is one which uses a federal law or treaty[19] for authorization of service. The *DeJames* court found

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This method of analysis provides a court with a manageable standard to determine whether the defendant's contacts are such that he be required to defend an action in the United States courts. *See* First Flight Co. v. National Carloading Corp., 209 F. Supp. 730, 736-39 (E.D. Tenn. 1962). *First Flight* was the first case to espouse the "national contacts" theory. *See infra* notes 44-63 and accompanying text.

15. 654 F.2d 280, 286 (3d Cir. 1981). *See infra* notes 67-72 and accompanying text.

16. Congress has provided nationwide service of process in a number of other federal actions. If it were to authorize such service in admiralty actions, it is likely that it would conform to the existing nationwide service statutes. *See infra* note 19 and accompanying text.

17. Long-arm statutes are created by states to obtain jurisdiction and to serve process on non-resident defendants. Most long-arm statutes today are construed as reaching to the constitutional limits of due process. *See* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 535. New Jersey's long-arm statute has been construed to its constitutional limits. Bernardi Bros. v. Pride Mfg., Inc., 427 F.2d 297, 298 (3d Cir. 1970) (New Jersey Civil Practice Rule R, 4:4-4(c) recognizes no limitations on extraterritorial service other than that imposed by the United States Constitution). *See infra* note 67-80 and accompanying text.

18. *See infra* note 19.

19. A wholly federal means of service uses a federal statute or treaty in conjunction with Fed. R. Civ. P. 4(e) (1976), which provides the constitutional methods of service of process in federal court. To utilize Rule 4, there *must* be a statute authorizing service. Arrowsmith v. United Press Int'l, 320 F.2d 219 (5th Cir. 1963). Today, the weight of authority is that Congress has the right to prescribe rules of judicial procedure. Bears v. Haughton, 34 U.S. 329, 360 (1835); 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1001 (1969 & Supp. 1979). *But see* Mississippi Publishing Corp. v. Murphee, 326 U.S. 438 (1945) (congressional power to prescribe rules does not foreclose judicial consideration of the validity and meaning of those rules).

Congress has provided specific authorization for nationwide service of process in a number of federal actions. The underlying policy consideration for these authorizations is uniformity within the federal law. The following jurisdictional statutes provide for nationwide service of process: 9 U.S.C. § 9 (1976) (actions to confirm arbitration awards under the Federal Arbitration Act); 15 U.S.C. § 5 (1976) (actions by the United States under the Sherman Act); 15 U.S.C. § 22 (1976) (actions against a corporation under the antitrust laws); 15 U.S.C. § 25 (1976) (actions by the United States under the Clayton Act); 15 U.S.C. §§ 77v(a), 78aa (1976) (actions under the Securities Exchange Acts of 1933 and 1934); 15 U.S.C. § 79y (1976) (actions under the Public Utility Holding Company Act of 1935); 15 U.S.C. § 80a-43 (1976) (actions under the Investment Company Act of 1940); 15 U.S.C. § 80b-14 (1976) (actions under the Investment Advisors Act of 1940); 28 U.S.C. §§ 1335, 1397, 2391 (1976) (actions under the Federal Interpleader Act); 28 U.S.C. § 2391(e)

that no such "wholly federal means" of service was available and determined that the state long-arm statute must be utilized.[20] Consequently, Hitachi's contacts with the United States could not be aggregated and utilized as a basis of jurisdiction.[21] The use of a state long-arm statute would restrain the federal court as if it were a state court.[22] Thus, the due process clause of the fourteenth amendment, which restrains the states, would also govern the exercise of federal jurisdiction. The "national contacts" theory would then be rendered ineffectual as it would be inconsistent with fourteenth amendment due process analysis which examines only a defendant's contacts with a state.

Recent Supreme Court decisions[23] have attempted to articulate the standards guaranteed by the due process clause of the fourteenth amendment.[24] These include fairness to the defend-

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(1976) (actions under Mandamus and Venue Act of 1962); 28 U.S.C. § 1655 (1976) (actions to assert rights in property when the defendant cannot be served within the state); 28 U.S.C. § 1692 (1976) (actions concerning land which lies in more than one district); 28 U.S.C. § 1695 (1976) (service of process against a corporation in a shareholders' derivative suit); 28 U.S.C. § 2321 (1976) and 28 U.S.C. §§ 20, 23, 43 (1976) (actions under the interstate commerce laws). *See* 2 MOORE'S FEDERAL PRACTICE, ¶ 4.42 at 518-23 (2d ed. 1980).

Most of these statutes provide no significant constitutional problems in terms of personal jurisdiction since the corresponding venue provisions significantly limit where a defendant will be amenable to suit. *See, e.g.*, 9 U.S.C. § 9 (1976) (provides for nationwide service of process in actions to affirm arbitration awards under the Federal Arbitration Act, but limits venue to the district where the arbitration award was made). Consequently, although a defendant may be served anywhere within the United States, venue will be proper only in judicial districts to which the defendant cannot object to jurisdiction on due-process grounds. Amenability to suit in these districts will not impose any significant burden on the defendant.

20. 654 F.2d 280, 287 (3d Cir. 1981).

21. *Id.* at 284. The due process clause of the fourteenth amendment allows only contacts with the state in which the district court sits to be examined as a basis for jurisdiction.

22. *See infra* notes 73-78 and accompanying text.

23. *See infra* notes 24-36 and accompanying text.

24. 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. Superior Court, 436 U.S. 84, 91 (1978).

As recently construed by the Supreme Court in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 280 (1980), fundamental fairness to the defendant and preserving the co-equal sovereignty of the states are considered the duel precepts embodied in the due process clause of the fourteenth amendment. *See* Comment, World-Wide Volkswagen Corp. v. Woodson: *Minimum Contacts in a Modern World*, 8 PEPPERDINE L. REV. 783 (1981). The Supreme Court has determined that fundamental fairness to the defendant is achieved by examining whether the defendant's conduct in relation to the forum was such that he purposely availed himself of the benefits and protection of the forum's laws. This test assures a foreign defendant that he will not be inconvenienced by litigation in a forum with which he has no connections or ties. World-Wide Volkswagen Corp. v. Woodson,

ant, by not forcing him to litigate in an inconvenient forum, and exercise of jurisdiction which does not impinge upon a sister state's sovereignty.[25] Abuse occurs when a state exercises jurisdiction over a defendant who has not had the requisite contacts with the forum state. To meet these requirements, the *DeJames* court concluded that the defendant must purposely avail himself of the forum, invoking its benefits and protections so that he can reasonably anticipate being haled into that forum's court.[26]

In applying this standard to the facts in *DeJames*, the court of appeals held that the mooring in New Jersey of a ship refurbished by Hitachi was not that purposeful activity with the forum required to constitutionally invoke jurisdiction.[27] The court determined that, absent some "affiliating circumstances"[28] with the forum, jurisdiction could not be exercised. Consequently, the *DeJames* court rejected the notion that foreseeability of contact, plus contact within the forum, can be an adequate basis for

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444 U.S. 280, 292 (1981); International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). States may exercise jurisdiction only over nonresidents who purposely avail themselves of the forum, since they would otherwise be expanding their power outside their boundaries. This exercise of power would impinge upon rights of a sister state. Consequently, jurisdiction would not be allowed. Hanson v. Denckla, 357 U.S. 235, 253 (1958); *see* Comment, Hanson v. Denckla, 72 HARV. L. REV. 695, 706 (1958).

25. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980); Hanson v. Denckla, 357 U.S. 235, 250-51 (1958) (minimum contacts restrictions on the state courts are "a consequence of territorial limitations on the power of the respective states").

26. 654 F.2d 280 (3d Cir. 1981). *See supra* notes 24, 25 and accompanying text.

27. According to the court, Hitachi neither marketed its products in, nor derived any economic benefit from, New Jersey; therefore, the nature of Hitachi's conduct was not such that it could have a "reasonable expectation" of being "haled before a court" in New Jersey. *Id.* at 284-85 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). The court concluded that the "fortuitous circumstance" of the vessel's presence in New Jersey did not satisfy the requirements of foreseeability set down in *World Wide Volkswagen*. 654 F.2d at 286. *See also* Stabilisierungsfonds Fur Wein v. Kaiserstuhl Wine Distributors, Ltd., 647 F.2d 200, 203 (D.C. Cir. 1981) ("stream of commerce" theory applied in trademark infringement action); Oswalt v. Scripto, Inc., 616 F.2d 191 (5th Cir. 1980) ("stream of commerce" theory applied in products liability action). See Note, *The Long-Arm Reach of the Courts Under the Effect Test After* Kulko v. Superior Court, 65 VA. L. REV. 175 (1979), for a complete discussion of the "stream of commerce" theory. *See also infra* notes 32-42 and accompanying text.

28. The term "affiliating circumstances" originated in Hanson v. Denckla, 357 U.S. 235, 246 (1958). It, along with the phrase "purposeful availment," were given no definition, but are thought to originate in *International Shoe*. It is thought that this language would preclude a mechanical method of determining jurisdiction and instead look to the quality and nature of the defendant's contacts. *See generally* Note, *The Long-Arm Reach of the Courts Under the Effect Test After* Kulko v. Superior Court, 65 VA. L. REV. 175 (1979).

jurisdiction.[29] In turn, the court also rejected the contention that the "stream of commerce" theory,[30] a basis for jurisdiction primarily in products liability actions, might embrace those defendants whose products are essential links in the distribution or marketing of another product.[31]

Foreseeability of contact with a forum is the cornerstone of the stream of commerce theory. First articulated in *Gray v. American Radiator & Standard Sanitary Corp.*,[32] this theory provides a basis for jurisdiction over manufacturers who, by placing their products in the stream of commerce, and through their commercial dealings[33] with the forum should foresee the product entering the forum. The Supreme Court, however, limited the *Gray* theory in *World-Wide Volkswagen v. Woodson*.[34] The Court required the manufacturer to purposely avail himself of the forum, such that through this affiliation it would be foreseeable that he may be held accountable in that forum.[35] Utili-

29. 654 F.2d 280, 286 (3d Cir. 1981). *See infra* notes 32-42 and accompanying text.

30. *Id.* at 285. *See* Honeywell, Inc. v. Metz Apparatewerke, 509 F.2d 1137, 1142-43 (7th Cir. 1975) (when a manufacturer of a product sells it to another or places it in some form of marketing scheme, the product has entered a "stream of commerce"). *See also infra* note 32 and accompanying text.

31. Normally, decisions utilizing the "stream of commerce" theory have involved injurious products sold from a manufacturer to another customer and so on until they reached the hands of the ultimate consumer. The manufacturer becomes liable when he could foresee the product entering the forum through his efforts to market his product. In *DeJames*, however, the product which caused the harm was an instrumentality of another product's distribution. The *DeJames* decision held that a manufacturer must purposely use the market in which his product did harm or there cannot be jurisdiction.

32. 22 Ill. 2d 432, 176 N.E.2d 761 (1961). This concept was specifically reaffirmed in World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980). *Gray* involved a valve manufacturer who sold his valves to another manufacturer for inclusion in water heaters. The water heaters then reached various states through a distribution chain. When one of the heaters exploded in Illinois, the Illinois Supreme Court upheld jurisdiction over the out-of-state valve manufacturer. The court explained that by selling its valves for use as a component the manufacturer had purposefully placed its products into the stream of commerce. *World-Wide Volkswagen's* reference to Gray is unclear. The Supreme Court explained the basic stream of commerce theory and then suggested a comparison to *Gray*. It may be that the Court was intimating that *Gray* had gone too far in finding the manufacturer of a component part, as opposed to the end product, amenable to jurisdiction. If this interpretation is correct, then *DeJames* was correctly decided. Justice Gibbons, in his dissent in *DeJames*, read the reference to *Gray* as an approving one. He would have upheld jurisdiction over Hitachi on the theory that the car-carrying ship was an integral component in the distribution scheme. 654 F.2d 280, 293.

33. While accepting "affiliating circumstances", the *DeJames* court severely limited the scope of these "circumstances."

34. 444 U.S. 286 (1980).

35. *Id.* at 295. If the defendant does not voluntarily avail himself of the forum, then the assertion of jurisdiction would infringe upon the sover-

zation of a direct or indirect marketing or distribution chain to derive a substantial benefit from the forum would fulfill the affiliation requirement.[36]

The *DeJames* court determined, however, that the standards articulated in *World-Wide Volkswagen* would also be applicable where the defendant's relation to the forum resulted from the distribution of another product.[37] In its analysis, the court took a restrictive view as to what satisfies the requirements of purposeful affiliating circumstances. The court felt that to have purposeful affiliating circumstances, the use of some type of marketing scheme to derive benefit from the forum was necessary.[38] This conclusion views Hitachi's status, as an integral link in the distribution of Japanese cars, irrelevant, absent more schematic purposeful affiliations with the forum. The court went on to find that Hitachi's contact with New Jersey through the American market for Japanese cars was inadequate to provide the requisite affiliation with the forum.[39] Thus, the *DeJames* court limited the scope of purposeful affiliation to situations where the defendant utilizes a direct or indirect marketing or distribution plan calculated to derive a substantial benefit[40] from the forum.

In light of other interpretations of the "stream of commerce" theory,[41] the *DeJames* court has made it apparent that the Third Circuit is unwilling to expand the scope of foreseeability in products liability actions. But, the Third Circuit has also indi-

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eignty of a sister state. Thus, no matter how convenient or efficient the forum might be, these interests will be looked at only if the forum state has not exceeded its sovereign authority. *Cf.* Bean v. Winding River Camp Ground, 444 F. Supp. 141 (E.D. Pa. 1978) (fairness to the defendant considered over the sovereignty issue).

36. World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1980).

37. *See supra* note 31.

38. 654 F.2d 280, 285. The court determined that unless the manufacturer attempted to utilize some marketing or distribution scheme in the forum state, there would be an absence of the requisite purposeful affiliation.

39. *Id.* The court believed that the opposite decision would permit the products to become in effect an agent for service of process wherever the product was distributed. This conclusion appears to be somewhat extreme given the nature and characteristics of admiralty and raises at least two questions. Does this give ship manufacturers one "free ride" in a port of each state? When will a shipbuilder have the requisite affiliation with the forum? *See also* World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1980).

40. 654 F.2d 280, 285.

41. McGee v. International Life Ins. Co., 355 U.S. 220 (1957). The Supreme Court allowed further jurisdictional expansion in holding that a single act within the state would be sufficient for jurisdiction if the cause of action arose out of that contact. *See* Note *The Role of Foreseeability in Jurisdictional Inquiry:* Tyson v. Whitaker & Sons, Inc., 32 ME L. REV. 496, 512, n.72 (1979-80) (when a defective product causes injury in the forum, that is the contact); Comment, *The Minimum Contacts Standard and Alien De-*

cated that the due-process requirements of *World-Wide Volkswagen* will include defendants whose products form the chain of distribution for another product.[42] Although the court followed the language and spirit of *World-Wide Volkswagen*, it frustrated a jurisdictional basis that has grown along with the expanding area of products liability.

After finding that jurisdiction could not be exercised under the stream of commerce theory consistent with the fourteenth amendment, the *DeJames* court then considered whether Hitachi's national contacts[43] with the United States could be aggregated to form a basis for jurisdiction compatible with the due process clause of the fifth amendment.[44]

At the outset of the decision, the court acknowledged that the fifth amendment due process clause determines the constitutionality of jurisdiction in a federal cause of action such as admiralty.[45] While the court expressed uncertainty as to whether Third Circuit precedent allowed the examination of a defendant's "national contacts,"[46] it assumed for purposes of appeal that if service of process could be accomplished constitutionally, then jurisdiction would be proper.[47]

The due process clause of the fifth amendment restrains the federal government from arbitrarily depriving any person of life, liberty or property without due process of law.[48] The courts, in

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fendants, 12 LAW & POL'Y OF INT'L BUS. 783, 792-803 (1980-81) (discusses variations of the "stream of commerce" theory).

The single act has been held sufficient to allow jurisdiction most often when the act was subject to special state regulation. *See, e.g.*, McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Traveler's Health Ass'n v. Virginia, 339 U.S. 643 (1950) (both cases dealt with insurance contracts within the state). Jurisdiction based on a tortious act causing a single injury in the forum has faced more opposition. *See* Comment, *Tortious Act as a Basis for Jurisdiction in Products Liability Cases*, 33 FORDHAM L. REV. 671, 682-85 (1965).

42. *See supra* note 31 and accompanying text.

43. *See supra* note 14.

44. U.S. CONST. amend. V. *See also infra* note 49 and accompanying text.

45. DeJames v. Magnificence Carriers, Inc., 654 F.2d 280, 283 (3d Cir. 1981) ("Because this suit arises under the district court's admiralty jurisdiction, the due process clause of the fifth amendment determines whether the district court has personal jurisdiction over Hitachi."). *See also supra* note 11. *See generally*, Comment, *Fifth Amendment Due Process Limitations on Nationwide Federal Jurisdiction*, 61 B.U.L. REV. 403 (1981) (although there are probably no other constitutional requirements, the principles that have evolved concerning fundamental fairness to the defendant should be incorporated into the analysis).

46. DeJames v. Magnificence Carriers, Inc., 654 F.2d 280, 283 (3d Cir. 1981) (Third Circuit precedent did not expressly approve of the "national contacts" theory).

47. *Id.*

48. *See supra* note 3 and accompanying text.

articulating this mandate and its application to the jurisdiction of the federal courts, have determined that a "general fairness standard"[49] dictates whether the exercise of jurisdiction is constitutional. A number of courts have defined this standard to be analogous to the "minimum contacts" analysis announced by the Supreme Court in *International Shoe Co. v. Washington*.[50] This approach requires a state court to examine a defendant's contacts or ties with the state as the basis for jurisdiction. These "contacts"[51] must be of a sufficient quality and nature[52] so that the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice.[53] This analysis of federal minimum contacts, combined with the principles and rules of the federal venue statute[54] and *forum non conveniens*,[55] has received support from a number of other circuits.[56] This analysis, however, has been criticized as not limiting federal jurisdic-

49. *See, e.g.*, Superior Coal Co. v. Ruhrkohle, A.G., 83 F.R.D. 414, 417 (E.D. Pa. 1979) (the fifth amendment due process standard is considered to afford a defendant general fairness). This is achieved by analogizing the minimum contacts analysis presented in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), to a defendant's contacts with the United States. *See also* Lone Star Package Car Co. v. Baltimore and Ohio R.R., 212 F.2d 147, 154 (5th Cir. 1954) (jurisdiction in federal question cases tested by "basic principles of fairness"). *See generally* Comment, *The Minimum Contacts Standard and Alien Defendants*, 12 LAW AND POL'Y OF INT'L BUS. 783 (1980-81).

50. 326 U.S. 310 (1945). In *International Shoe*, the Supreme Court held that the due process clause of the fourteenth amendment required only that the defendant have certain minimum contacts with the state so that the "maintenance of the suit [would not offend] traditional notions of fair play and substantial justice. *Id.* at 316 (citing Milliken v. Meyer, 311 U.S. 457 (1952)).

Further, the court required that due process analysis be based, not upon quantity of contacts, but upon the "quality and nature" of the defendant's activity in connection with the state. *Id.* at 319. *Compare* Note, *The Growth of the* International Shoe *Doctrine*, 16 U. CHI. L. REV. 523 (1948-49) *with* Shaffer v. Heitner, 433 U.S. 186 (1977) (the court's analysis should deal with the relationship between the forum, the defendant and the litigation).

51. *See supra* notes 28 and 36 and accompanying text.

52. International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

53. *Id.* at 325.

54. 28 U.S.C. §§ 1391, 1404, 1406 dealing with venue, transfer of venue and *forum non conveniens*. These principles, through their interaction with the federal courts, attempt to bring the situs of trial to the most convenient federal forum.

55. The general federal venue statute, *supra* note 54, would mitigate some of the application problems of the "national contacts" approach. Aliens may be sued in any district. 28 U.S.C. § 1391(d) (1976), 28 U.S.C. § 1406 (1976).

56. *See, e.g.*, Mariash v. Morrill, 496 F.2d 1138, 1143 (2d Cir. 1974) (only minimum contacts with the United States are necessary to exercise jurisdiction; venue provisions will allow for a convenient forum).

tion in any meaningful manner.[57] For example, the district court in *Oxford First Corp. v. PNC Liquidating Corp.*[58] articulated a five-part fairness test in which no one element dominates the analysis.[59] Although not widely accepted, the *Oxford* test presents a comprehensive analysis which places function above mechanical methodology in determining federal jurisdiction in a federal matter.

Regardless of the methodology used, the "national contacts" theory is founded on the notion that the United States, as sovereign, has the power to exercise jurisdiction over any individual, corporation, or property which is found within its territory or which is determined to have enough contact with the territory so that the exercise of jurisdiction will not offend notions of fair play.[60] Thus, a federal court may exercise jurisdiction over a foreign defendant based on his national contacts.[61] The due pro-

57. For example, a boat maker in Maine who only sells boats in Maine, to Maine residents, could theoretically be haled into a California federal court if one of his boats caused injury in California.

58. 372 F. Supp. 191 (E.D. Pa. 1974).

59. *See* Oxford First Corp. v. PNC Liquidating Corp., 372 F. Supp. 191, 203 (E.D. Pa. 1974) (adopting "fairness test" rather than a simple or mechanical "national contacts" approach). The *Oxford First* court set out five factors in its test to determine jurisdiction in federal question cases: "[1] the extent of the defendant's contact with the place where the action was brought; *i.e.*, the *International Shoe* type criteria. . ., [2] inconvenience to the defendant of having to defend in a jurisdiction other than that of his residence or place of business, . . . [3] judicial economy, [*i.e.*, the possibility of multiple lawsuits] . . . , [4] probable situs of the discovery proceedings. . ., and [5] the nature of the regulated activity in question and the extent of impact that defendant's activities have beyond the borders of his state of residence or business." Oxford First Corp. v. PNC Liquidating Corp., 372 F. Supp. 191, 203-04 (E.D. Pa. 1974).

60. *See, e.g.*, McDonald v. Mabee, 243 U.S. 90 (1917) ("the foundation of jurisdiction is physical power"). *Accord* Pennoyer v. Neff, 95 U.S. 714, 723 (1877) (every state possesses exclusive jurisdiction over all persons and property within its territory).

Originally, under the doctrine stated in *Pennoyer v. Neff*, a defendant had to be physically present within the forum for jurisdiction to be proper. With the dramatic increase in the mobility of society and the growth and importance of corporations, *Pennoyer's* physical presence concepts became outmoded. Accordingly, the Supreme Court adopted the minimum contacts test in *International Shoe* to determine whether a defendant was amenable to suit.

Since the *International Shoe* decision, the Court, acknowledging modern commercial realities, has attempted to direct the parameters of due process analysis to provide fairness to the defendant and substantial justice. *See, e.g., supra* notes 10 and 32. *See generally* Kurland, *The Supreme Court, the Due Process Clause, and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569 (1958).

61. *See, e.g.*, Engineering Equip. Co. v. S.S. Selene, 446 F. Supp. 706 (S.D.N.Y. 1978) (applying "national contacts" approach in admiralty action); Centronics Data Computer Corp. v. Mannesmann, A.G., 432 F. Supp. 659 (D.N.H. 1977) (applying "national contacts" approach in case arising under Clayton Act 15 U.S.C. §§ 15, 22, 26 (1976)); Cryomedics, Inc. v.

cess analysis, however, doesn't end here.

In order for jurisdiction to comport with due process, the federal court must be competent to adjudicate the matter. This competence is acquired when venue is proper and when the defendant has received reasonable notice through appropriate service of process.[62] It is this aspect of the due process analysis that caused the *DeJames* court to reject the "national contacts" theory.[63]

The court acknowledged the theory's logical appeal,[64] but noted that the major obstacle to wide-spread support is the inability to affect constitutional service of process.[65] The *DeJames* court determined that, absent specific congressional authorization[66] for nationwide service of process in admiralty actions, the breadth of federal process would be limited to Rule 4(e) of the Federal Rules of Civil Procedure.[67] Rule 4(e) provides for service upon parties not found within the state in which the district court sits.[68] It allows authorization for such service through the use of a federal statute, treaty or court order (wholly federal

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Spembly, Inc., 397 F. Supp. 287 (D. Conn. 1975) (applying "national contacts" approach in case arising under federal patent laws, 35 U.S.C. §§ 271, 281, 293 (1970)); Holt v. Klosters Rederi A/S, 355 F. Supp. 354 (W.D. Mich. 1973) (aggregating national contacts in case arising under the Death on High Seas Act, 46 U.S.C. § 761 (1970)); Alco Standard Corp. v. Benalal, 345 F. Supp. 14 (E.D. Pa. 1972) (applying "national contacts" approach in case arising under Securities Exchange Act of 1934, 15 U.S.C. § 78aa (1979)); Edward J. Moriarity & Co. v. General Tire and Rubber Co., 289 F. Supp. 381 (S.D. Ohio 1967) (applying "national contacts" approach in antitrust action); First Flight Co. v. National Carloading Corp., 209 F. Supp. 730 (E.D. Tenn. 1962) (applying "national contacts" approach in case arising under Interstate Commerce Act, 49 U.S.C. § 20 (1958)). *See generally* Green, *supra* note 3; Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1123-25 n.6 (1966) (suggesting that federal courts look to national contacts of defendant to determine jurisdiction in federal question cases). Comment, *Fifth Amendment Due Process Limitations on Nationwide Federal Jurisdiction*, 61 B.U.L. REV. 403 (1981) (although there are probably no other constitutional requirements, the principles that have evolved concerning fundamental fairness to the defendant should be incorporated into the analysis).

62. *See* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). *See generally* Barrett, *Venue and Service of Process in the Federal Courts—Suggestions for Reform*, 7 VAND. L. REV. 608 (1954). Service in the federal courts is regulated by Rule 4 of the Federal Rules of Civil Procedure (FRCP).

63. DeJames v. Magnificence Carriers, Inc., 654 F.2d 280, 283, 286-90 (3d Cir. 1981).

64. *Id.* at 283.

65. Service must be made to reasonably notify the defendant of the suit against him. *See supra* note 62.

66. *See infra* note 71 and accompanying text.

67. FED. R. CIV. P. 4(e) (1976) [hereinafter referred to as Rule 4(e)].

68. *Id.*

means)[69] or, in the absence of such authorization, through the use of a state long-arm statute.[70] The court determined that the federal treaty which DeJames attempted to utilize was a multilateral treaty[71] providing the mechanics for service of judicial and extra-judicial documents abroad, and was not intended to create authorization for such service itself. Consequently, the *DeJames* court limited itself to using the New Jersey state long-arm statute for authorization of service.[72]

Traditionally, the federal courts, when utilizing a state's long-arm statute, have restrained themselves as if they were the state courts exercising jurisdiction.[73] Consequently, not only the state mechanics of process, but also the state due process limitations on the exercise of jurisdiction, are adopted by the

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69. 654 F.2d at 284. Congress has authorized nationwide service of process in some cases. *See, e.g.*, 15 U.S.C. § 78aa (1976) (nationwide service of process for violations of Securities Exchange Act); 15 U.S.C. §§ 5, 25 (1976) (nationwide service of process to bring in additional parties in actions by United States to enforce antitrust laws); 28 U.S.C. § 2361 (1976) (nationwide service of process in interpleader actions); 28 U.S.C. § 1695 (1976) (nationwide service of process in stockholder's derivative action).

The *DeJames* court also stated that since the treaty could be utilized in conjunction with a state long-arm statute, the treaty was not an independent authorization of service of process. 654 F.2d at 288. *See* Shoei Kako Co. v. Superior Ct., 33 Cal. App. 3d 808, 109 Cal. Rptr. 402 (1973) (state long-arm may be used in conjunction with treaty as long as the foreign nation in which service is made does not object).

70. *See supra* note 69 and accompanying text.

71. On appeal, DeJames contended that the Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil and Commercial Matters, 1969, 20 U.S.T. 361 provided a wholly federal means of service of process, thus allowing for the aggregation of Hitachi's contacts with the United States as a whole. The court rejected this contention, holding that the treaty, rather than creating independent authorization of service of process, provided an efficient method by which service of process could be made in a foreign country "where a federal or state statute authorized such service." 654 F.2d at 290. The court based its conclusion on a review of the legislative history of the treaty. *See* S. EXEC. REP. No. 6, 90th Cong., 1st Sess. 11-12 (1967); S. REP. No. 2392, 85th Cong., 2d Sess. 14-19 (1958), *reprinted in* [1958] U.S. CODE CONG. & AD. NEWS 5201, 5206.

72. DeJames v. Magnificence Carriers, Inc., 654 F.2d 280, 284 (3d Cir. 1981). Utilization of state procedures through Rule 4 of the Federal Rules of Civil Procedure limits the reach of the federal court to the extent allowed by the state procedure. Hartley v. Sioux City & New Orleans Barge Lines, 379 F.2d 354, 357 (3d Cir. 1967).

73. *See, e.g.*, Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 418 (9th Cir. 1977) (in federal question case Rule 4(e) requires that, where service of process is made under state statute or rule, the jurisdiction of the federal court is limited by state law). *Accord* Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co., 449 F.2d 775, 776 (10th Cir. 1971) (application of Colorado long-arm statute pursuant to Rule 4(e)); Gavelek v. Coscol Petroleum Corp., 491 F. Supp. 188, 192 (E.D. Mich. 1979) (application of Michigan long-arm statute); Superior Coal Co. v. Ruhrkohle, A.G., 83 F.R.D. 414, 418 (E.D. Pa. 1979) (rejecting "national contacts" approach because Federal Rules of Civil Procedure do not provide basis for application); Volk Corp. v. Art-Pak

federal courts. Thus, a federal court, even when hearing an admiralty matter (as in *DeJames*), is restrained from exercising jurisdiction over a defendant by the due process clause of the fourteenth amendment.[74]

Rule 4(e) specifically provides for authorization through a state long-arm statute under the "circumstances and in the manner prescribed in the statute or rule."[75] The vast majority of federal courts have interpreted this to mean that they can only utilize a state long-arm statute as if they were a state court.[76] The motivation for such an interpretation is elusive, as there is very little analysis of the source of this restriction, but the restriction may be either voluntary or guided by some constitutional or congressional policy.[77] In any event, this restriction tends to nullify the "national contacts" theory. This results because the fourteenth amendment due-process clause requires that only a defendant's contacts with the state be considered the basis for jurisdiction. Any other result would offend the federalism values instilled in the fourteenth amendment due-process analysis.[78] As a result of this analysis, the *DeJames* court con-

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Clip Art Serv., 432 F. Supp. 1179, 1180-81 n.2 (S.D.N.Y. 1977) (application of New York long-arm statute).

Prior to the 1963 amendments to the Federal Rules of Civil Procedure, there was no provision for federal courts to utilize state long-arm statutes developed in the wake of *International Shoe*. The federal courts turned to Rule 4(d)(7), which authorizes the use of state service of process methods in federal actions to serve corporations within the state or authorized to do business within the state, to exercise jurisdiction through state long-arm provisions. *See* Star v. Rogalny, 162 F. Supp. 181 (E.D. Ill. 1957); Notes of Advisory Committee on 1963 Amendments to Rules, Note on Subdivision (d)(7), FED. R. CIV. P. 4.

Courts resorting to Rule 4(d)(7) in federal question cases have reached the same result as those courts employing state long-arm statutes through Rule 4(e) on the issue of amenability to suit. *See, e.g.*, Hartley v. Sioux City & New Orleans Barge Lines, 379 F.2d 354, 356 (3d Cir. 1967) (application of Pennsylvania substituted service statute, pursuant to Rule 4(d)(7), brought the jurisdictional inquiry within the limitations of that statute); Amburn v. Harold Forster Indus., 423 F. Supp. 1302, 1302-05 (E.D. Mich. 1976) (rejecting "national contacts" approach where service of process made by state long-arm statute pursuant to Rule 4(d)(7)). *See also* C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL §§ 1068, 1069 (1969 & Supp. 1979).

74. The mechanics of process are the actual requirements of service and the method prescribed for the physical act.

75. FED. R. CIV. P. 4(e) (1976).

76. *See supra* note 73.

77. This voluntary restriction is not constitutionally mandated but is merely a result of Congress' desire to place the district courts in a logical, convenient location. *See* F. JAMES & G. HAZARD, CIVIL PROCEDURE § 12.10 at 620 (2d ed. 1977).

78. *See* Jonnet v. Dollar Savings Bank, 530 F.2d 1123 (3d Cir. 1976) (values of federalism are instilled in the due-process analysis). *See also* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 280, 293-94 (1980); Hanson v. Denckla, 357 U.S. 235 (1958); Comment, Hanson v. Denckla, 72 HARV. L. REV.

cluded that the "national contacts" theory could not be used as a basis for jurisdiction absent specific congressional, or a "wholly federal' " means of service of process.[79] Any other outcome, the court stated, would result in a judicially created authorization for service of process which the court concluded was beyond its province.[80]

The *DeJames* court's analysis of the obstacle to "national contacts" serves again to call attention to the undesirable anomaly which exists when a federal court, hearing a federal question matter such as admiralty, must labor under the fourteenth amendment due-process restrictions imposed on the states rather than under the fifth amendment limitations on federal due process. As the *DeJames* court pointed out,[81] this situation could easily be rectified by congressional authorization of service of process in admiralty actions, and even more broadly, in all federal question cases under 28 U.S.C. § 1331.[82] Until such time, however, the deleterious effects[83] of this anomalous situation

695, 706 (1958). States may exercise jurisdiction over non-residents who purposely avail themselves of the forum, otherwise they would be expanding their power outside their boundaries. This exercise of power would impinge upon a sister state's rights. Consequently, jurisdiction would not be allowed. Hanson v. Denckla, 357 U.S. at 253.

79. Absent specific statutory authorization or a wholly federal means of service, the breadth of the federal court's jurisdiction is controlled by Rule 4(e) of the Federal Rules of Civil Procedure. Illinois v. City of Milwaukee, 599 F.2d 151, 156 n.3 (7th Cir. 1979) *cert. denied*, 451 U.S. 982 (1981). Rule 4(e) provides:

> Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in that statute or rule.

FED. R. CIV. P. 4(e). Thus, the federal courts have applied the state long-arm statutes of the state in which the district court sits. In employing state long-arm statutes, the federal courts have voluntarily limited their assertion of jurisdiction by the fourteenth amendment as if they were state courts. Illinois v. City of Milwaukee, 599 F.2d 151, 156 n.3 (7th Cir. 1979), *cert. denied*, 451 U.S. 982 (1981); Ag-Tronic v. Frank Paviour, Ltd., 70 F.R.D. 393, 400 (D. Neb. 1976). *But see* Cryomedics, Inc. v. Spembly, Ltd, 397 F. Supp. 287, 290 (D. Conn. 1975); Engineered Sports Products v. Brunswick Corp., 362 F. Supp. 722, 728 (D. Utah 1973) (both courts applied the minimum contacts test to the United States and used Rule 4(e) in conjunction with the state long-arm statute).

80. 654 F.2d 280, 284.

81. *Id.*

82. Congress is more likely to take limited steps with its blank check to authorize service of process. *See supra* notes 19 and 77 and accompanying text.

83. *See infra* note 84 and accompanying text. The inferior federal courts were to hear matters of national concern, and to afford citizens a national

will continue to hamper the federal courts, especially in light of the increased mobility of society and the expanding character of the commercial world.

The effect is threefold. First, the federal courts, in applying the long-arm statutes of the states in which they sit, are more likely to produce non-uniform application of federal law, which is intended to be national in scope.[84] This results because each state, in enacting its long-arm statute, may not provide a comprehensive scheme of attaining jurisdiction,[85] or perhaps may not stretch its statute to its constitutional limits.[86] Second, the national character and traditional independence of the federal courts as a forum above local prejudice is thwarted by treating the federal courts as if they were state courts.[87] Finally, this anomalous situation allows a defendant, who has substantial "national contacts," to commit torts or contract breaches which have remedies under federal law and then to escape federal jurisdiction because he does not have sufficient contact with the state in which the cause of action occurred. There does not appear to be a practical or principled reason for this restriction on federal jurisdiction, especially in matters within the federal courts' original jurisdiction.

The *DeJames* decision illustrates a conservative approach to the parameters of personal jurisdiction. The court, in analyzing the "stream of commerce" theory, emphasized the role of sover-

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forum where a uniform body of federal law was applied. *See* F. JAMES & G. HAZARD, CIVIL PROCEDURE § 12.10 at 620 (2d ed. 1977); C. WRIGHT, HANDBOOK OF THE LAW OF FEDERAL COURTS § 64 at 304-05 (3d ed. 1976). *See generally* Green, *Federal Jurisdiction In Personam of Corporations and Due Process*, 14 VAND. L. REV. 967 (1961).

84. State long-arm statutes are particularly suited to address state concerns in areas such as tort and contract law and in the regulation of business within the state, but they bear little relation to federal needs which are national in scope. In areas such as taxation, patent and trademark law, admiralty, antitrust, and interstate commerce, the federal courts should be able to proceed where a state court would refuse because the defendant does not have sufficient contacts. It is vital in these areas of national importance that uniformity of decisions prevail.

85. A state long-arm statute can be utilized only when the particular cause of action is enumerated in the long-arm statute. Gray v. American Radiator & Std. Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

86. Although New Jersey's long-arm statute has been construed to its constitutional limit, W.A. Kraft Corp. v. Terrace on the Park, Inc., 337 F. Supp. 206, 207 (D.N.J. 1972); Bernardi Bros., v. Pride Mfg., Inc., 427 F.2d 297, 303 (3d Cir. 1970), the states are not required to exercise their power to its constitutional limits. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

87. This voluntary restraint operates to restrict the federal courts in promulgating national law. Limiting the federal courts' jurisdiction to that of a state court completely frustrates the purpose of having an independent federal judiciary to determine federal law.

eignty[88] over the factual considerations involved in admiralty suits. The court's decision is especially significant because it drastically narrowed what is considered "purposeful availment" in products liability cases. In rejecting the "national contacts" theory, the court again followed the traditional interpretations of the law. However, in light of the judicial policy regarding the rules of civil procedure, the court's decision is appropriate. The court points out, for instance, the need for nationwide service of process, at least in admiralty actions. While the *DeJames* decision is supported by case law, the court's generally conservative attitude may be questioned, for if it continues to prevail, our jurisdictional principles are in danger of becoming outmoded.[89]

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88. *See supra* note 25 and accompanying text.

89. 654 F.2d 280 at 309 (Brennan, J. dissenting) (possibly our notions of jurisdiction are already outmoded).