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Civil Procedure - In Personam Jurisdiction - In Personam Jurisdiction May Be Exercised over a Foreign Corporation Which Has Engaged in Continuous and Substantial Business Transactions in Texas for Cuases of Action Unrelated to Those Transactions.

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CASENOTES

CIVIL PROCEDURE—In Personam Jurisdiction—In Personam Jurisdiction May Be Exercised Over A Foreign Corporation Which Has Engaged In Continuous and Substantial Business Transactions in Texas For Causes of Action Unrelated to Those Transactions.

Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870 (Tex. 1982).

Helicol, a Peruvian corporation, contracted with Williams-Sedco-Horn, an American joint venture, whereby Helicol was to provide helicopter transportation for the employees of the joint venture in Peru.[1] Although initial negotiations took place in Texas, the contract was signed and executed in Peru. Helicol purchased helicopters and spare parts in Texas, had personnel trained in Texas, and carried liability insurance payable in American currency.[2] A helicopter owned and operated by Helicol crashed in Peru killing four American employees of the joint venture.[3] Hall, as survivor of one of the deceased employees, sued Helicol in Texas for negligence based on pilot error, and Helicol entered a special appearance[4] to

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1. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 871 (Tex. 1982). The original opinion appears in 25 TEX. SUP. CT. J. 190 (Feb. 24, 1982). This opinion was withdrawn on motion for rehearing. The opinion rendered after rehearing is found at 638 S.W.2d 870 (TEX. 1982). Justice Pope's dissenting opinion rendered after rehearing is located at 25 TEX. SUP. CT. J. 454, 457 (July 24, 1982) (Pope, J., dissenting). This dissenting opinion was replaced with the final dissent on 638 S.W.2d 870, 877 (Tex. 1982).

2. *See id.* at 871.

3. *See id.* at 871.

4. *See* TEX. R. CIV. P. 120a. Rule 120a authorizes a defendant to make a special appearance for the limited purpose of determining whether he is amenable to process without consenting to the jurisdiction of Texas courts. *See id.*. Before the passage of rule 120a a defendant either appeared generally, thus waiving jurisdictional objections, or defaulted and argued no jurisdiction on appeal. *See generally* Thode, *In Personam Jurisdiction: Article 2031b, the Texas "Long-Arm" Jurisdiction Statute; and the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEX. L. REV. 279, 306 (1964) (discussing defendant's alternatives in challenging jurisdiction both before and after enactment of rule 120a).

assert a challenge to personal jurisdiction. The trial court overruled this challenge, but the First Court of Civil Appeals reversed,[5] holding that Helicol's activities in Texas did not constitute sufficient minimum contacts to establish jurisdiction.[6] Hall appealed to the Texas Supreme Court.[7] Held-*Reversed.* In personam jurisdiction may be exercised over a foreign corporation which has engaged in continuous and substantial business transactions in Texas for causes of action unrelated to those transactions.[8]

Historically, a state court's ability to exercise in personam jurisdiction over a defendant was based on that state's sovereign power over the defendant's person.[9] In *Pennoyer v. Neff*,[10] the United States Supreme Court held that the Due Process Clause of the fourteenth amendment[11] limited a state court's power to exercise in personam jurisdiction over a nonresident defendant,[12] and that due process allowed a state court to

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5. *See* Helicopteros Nacionales de Columbia, S.A. ("Helicol") v. Hall, 616 S.W.2d 247, 248 (Tex. Civ. App.—Houston [1st Dist.] 1981), *rev'd on rehearing*, 638 S.W.2d 870, 871 (Tex. 1982).

6. *See id.* at 252. The court of civil appeals based its decision on the fact that a tort was not committed in whole or in part in Texas, nor was a contract performed in whole or in part in Texas. *Id.* at 250-51. Thus, jurisdiction would not attach by operation of the statute. Furthermore, Helicol's activities did not meet due process requirements. *Id.* at 252.

7. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 871 (Tex. 1982).

8. *See id.* at 874.

9. *See generally* Glen, *An Analysis of "Mere Presence" and Other Traditional Bases of Jurisdiction*, 45 BROOKLYN L. REV. 607, 609-14 (1979); Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241; Comment, *Developments in the Law—State Court Jurisdiction*, 73 HARV. L. REV. 909, 919-23 (1960).

10. 95 U.S. 714 (1877).

11. *See* U.S. CONST. amend. XIV, § 1. The fourteenth amendment states: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.* at § 1.

12. *See* Pennoyer v. Neff, 95 U.S. 714, 733 (1877). In all subsequent cases, the Court has stated that the due process clause of the fourteenth amendment requires the defendant be given adequate notice of the claim against his life, liberty, or property. *See, e.g.*, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-18 (1950) (due process requires reasonable "notice and opportunity for hearing"); Milliken v. Meyer, 311 U.S. 457, 463 (1940) (notice prerequisite to valid judgment against defendant); Wuchter v. Pizzutti, 276 U.S. 13, 21 (1928) (statute authorizing service on nonresident corporation void unless corporation given notice of suit). Additionally, due process demands a sufficient nexus with the state to make it reasonable to bind the defendant by a state court's decision. *See, e.g.*, Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978) (assertion of jurisdiction must be based on fair assessment of defendant's activity); Hanson v. Denckla, 357 U.S. 235, 251 (1958) (defendant's minimum contact with state necessary for exercise of in personam jurisdiction); International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (due process requires defendant have minimum contact with state). A judgment rendered by a state in violation of the due process clause is void in that state. *See* McDonald v. Mabee, 243 U.S.

exercise jurisdiction only over persons or things located within the borders of that state.[13] With the development of transportation, technology, communications, and the growth of corporations, this territorial principle proved too restrictive,[14] and in response, the Supreme Court adopted a more flexible approach to jurisdictional conflicts. Formulating the modern standard of jurisdictional due process scrutiny, the Court in *International Shoe Co. v. Washington*[15] concluded that due process is satisfied when the nonresident defendant has some minimum contact with the forum state such that the exercise of jurisdiction would not "offend traditional notions of fair play and substantial justice."[16] Although the *International Shoe* due process standard allowed an expansion of state court

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90, 92 (1917). Furthermore, the void judgment cannot be accorded full faith and credit by a sister state. *See* Griffin v. Griffin, 327 U.S. 220, 229 (1946).

13. *See* Pennoyer v. Neff, 95 U.S. 714, 722 (1877). Consequently, a state had no jurisdiction over persons or things outside that state. *See id.* at 722.

14. *See* McGee v. International Life Ins. Co., 355 U.S. 220, 222-23 (1957). Following the *Pennoyer* decision, some courts realized that under certain circumstances a defendant should be required to defend an action against himself in a state in which he does not reside. *See* Connecticut Mut. Life Ins. Co. v. Spratley, 172 U.S. 602, 610 (1899) (jurisdiction permitted over nonresident corporation if it does business in state); *see also* Commercial Mut. Accident Co. v. Davis, 213 U.S. 245, 255 (1909) (jurisdiction asserted over corporaton doing business in state). To justify the assertion of jurisdiction over a nonresident defendant, courts resorted to such legal fictions as "implied consent" or "presence" which were still consistent with the rationale of *Pennoyer*. *See, e.g.*, Henry L. Doherty & Co. v. Goodman, 294 U.S. 623, 627-28 (1935) (consent of corporation implied if office established and business transacted in state); Hess v. Pawloski, 274 U.S. 352, 356 (1927) (use of "implied consent" to allow jurisdiction over nonresident motorist using state's highways); International Harvester Co. of Am. v. Kentucky, 234 U.S. 579, 586 (1914) ("corporate presence" established by doing business in state). *See generally* Cahill, *Jurisdiction Over Foreign Corporations and Individuals Who Carry On Business Within the Territory*, 30 HARV. L. REV. 676, 690-96 (1917) (in depth analysis of consent and presence theories); Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569, 578-84 (1958) (detailed discussion of consent and presence theories).

15. 326 U.S. 310 (1945). In *International Shoe*, the defendant corporation was subjected to the courts of Washington in proceedings to recover unpaid unemployment contributions required by state law. International Shoe was a Delaware corporation with its principal place of business in Missouri. *See id.* at 313. The corporation had no office in Washington, made no contracts there, and did not manufacture goods in nor deliver them to the state of Washington. *See id.* at 313. Its only connection with Washington was the presence of thirteen resident salesmen paid on commission. *See id.* at 313. The Court considered these contacts sufficient to satisfy due process. *See id.* at 320.

16. *Id.* at 316. Due process standards are met if the contacts with the forum "make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." *Id.* at 317. The Court deemed relevant to its determination of reasonableness that International Shoe's activity was systematic and continuous. *See id.* at 319. The corporation was afforded the benefits and protection of the state's laws, and the cause of action arose from the intrastate activity. *See id.* at 319-20.

jurisdiction,[17] it is not without limitations. The minimum contacts with the forum state must consist of some purposeful or affirmative act by the defendant[18] of such a nature that he could reasonably anticipate the possibility of defending a lawsuit in that state.[19] The United States Supreme Court has identified several factors relevant to the determination that minimum contacts exist:[20] the interests of the forum state;[21] the relationship between the cause of action and the defendant's activity in the state;[22] the interests of the plaintiff in having a convenient forum to liti-

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17. *See* McGee v. International Life Ins. Co., 355 U.S. 220, 222 (1957). The defendant's only contact with the forum state was the issuance of a single life insurance policy by mail to a California resident. The defendant actively solicited the transaction and the Court felt this was sufficient to allow jurisdiction by a California court. *See id.* at 223. The Court noted that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents." *Id.* at 222. This case is commonly referred to as the "highwater mark" of personal jurisdiction. *See* Comment, *Minimum Contacts Analysis of In Personam Jurisdiction Over Individuals Based on Presence,* 33 ARK. L. REV. 159, 169 (1979).

18. *See* Hanson v. Denckla, 357 U.S. 235, 253 (1958). The *Hanson* Court stated that "the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of a contact with the forum State. . . . [I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." *Id.* at 253; *see also* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 93-94 (1978) (defendant's activity must be purposeful).

19. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (defendant must reasonably expect lawsuit from nature of conduct in forum); Oswalt v. Scripto, Inc., 616 F.2d 191, 200 (5th Cir. 1980) (jurisdiction allowed if defendant should have known defective product would enter Texas). *See generally* Comment, *Civil Procedure—Minimum Contacts—Distinguishing Foreseeable Use From Foreseeable Resale to Determine Jurisdiction Over Foreign Corporation in Products Liability Litigation,* 14 SUFFOLK U.L. REV. 1169, 1177-79 (1980) (explanation of "stream of commerce" theory).

20. *See* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978) (quoting Hanson v. Denckla, 357 U.S. 235, 246 (1958)). The Court has stated: "[l]ike any standard that requires a determination of 'reasonableness,' the 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." *Id.* at 92.

21. *See* McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). A state may have several different interests in settling a jurisdictional dispute. These interests may include invoking its police power to settle claims arising from businesses regulated by the state, protecting its citizens from acts done in the state or acts causing effects in the state, or adjudicating lawsuits involving property located in the state. *See, e.g.,* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 49-52 (1971) (breakdown of particular state interests); Comment, *Minimum Contacts Analysis of In Personam Jurisdiction Over Individuals Based On Presence,* 33 ARK. L. REV. 159, 168 (1979) (listing several state interests); Comment, *Asserting Jurisdiction Over Nonresident Corporations On the Basis of Contractual Dealings: A Four-Step Proposal,* 12 PAC. L.J. 1039, 1059 (1981) (discussion of state interests in exercising jurisdiction).

22. *See* International Shoe Co. v. Washington, 326 U.S. 310, 319-20 (1945). If the defen-

gate his claim;[23] and the quality and nature of the defendant's activity.[24]

Before a Texas court can obtain jurisdiction over a nonresident defendant lacking an appointed agent for service of process, the court must acquire statutory authorization.[25] The Texas long-arm statute, article 2031b,[26] allows jurisdiction over any defendant "doing business"[27] in the state. The exercise of jurisdiction must also conform to due process standards as defined by the United States Supreme Court.[28] In *O'Brien v. Lanpar Co.*,[29] the Texas Supreme Court adopted a three-step test to determine if due process had been satisfied.[30] First, the defendant must have completed a transaction in the state or performed some other pur-

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dant's activity is "substantial, continuous, and systematic," the Supreme Court has held that jurisdiction may be exercised over the defendant for causes of action totally *unrelated* to that activity. *See* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 445-48 (1952); *cf.* National Geographic Soc'y v. California Bd. of Equalization, 430 U.S. 551, 560 (1977) (due process does not require nexus between activity in state and defendant's out-of-state business for tax purposes).

23. *See* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978).

24. *See* International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945).

25. *See, e.g.*, Baird v. Bell Helicopter Textron, 491 F. Supp. 1129, 1133 (N.D. Tex. 1980) (defendant must be amenable to process under long-arm statute); DLJ Properties/73 v. Eastern Savings Bank, 549 S.W.2d 754, 756 (Tex. Civ. App.—Eastland 1977, no writ) (initial inquiry is whether jurisdiction allowed under article 2031b); Cohn-Daniel Corp. v. Corporacion de la Fonda, Inc., 514 S.W.2d 338, 341 (Tex. Civ. App.—Eastland 1974, no writ) (determination that jurisdiction permitted by statute before constitutional review).

26. *See* TEX. REV. CIV. STAT. ANN. art. 2031b (Vernon 1964). Texas has several specialized long-arm statutes that permit jurisdiction over nonresident defendants in certain circumstances. *See* TEX. REV. CIV. STAT. ANN. art. 2039a (Vernon 1964 and Supp. 1982) (allows jurisdiction over nonresident motorist using state highways); TEX. FAM. CODE ANN. § 11.051 (Vernon Supp. 1982) (jurisdiction authorized in certain domestic relations).

27. *See* TEX. REV. CIV. STAT. ANN. art. 2031b, § 4 (Vernon Supp. 1982). The statute was amended to define "doing business."

> For the purpose of this Act, and without including other acts that may constitute doing business, . . . [any defendant] shall be deemed doing business in this State by entering into a contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State.

Id. at § 4.

28. *See, e.g.*, U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (Tex. 1977) (due process must be satisfied before exercising jurisdiction); Computer Synergy Corp. v. Business Systems Prods. 582 S.W.2d 573, 575 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ) (listing criteria necessary to acquire jurisdiction consistent with due process); Hoppenfeld v. Crook, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) (inquiry into constitutional limitations on extending jurisdiction).

29. 399 S.W.2d 340 (Tex. 1966).

30. *See id.* at 342. The court was construing an Illinois statute and accorded full faith and credit to an Illinois judgment against a Texas corporation. *See id.* at 340. This test was first enunciated in a Washington case. *See* Tyee Constr. Co. v. Dulien Steel Prods. 381 P.2d 245, 251 (Wash. 1963).

poseful act.[31] Secondly, the act must give rise to or be connected with the cause of action.[32] Finally, the assertion of jurisdiction must not "offend traditional notions of fairness and substantial justice."[33] The Texas Supreme Court, in *U-Anchor Advertising, Inc. v. Burt*,[34] reaffirmed its *O'Brien* decision by adhering to the three-step approach,[35] but provided no clear guidance[36] for determining the exact nature of the nexus requirement.[37]

Faced with a jurisdictional dispute in *Hall v. Helicopteros Nacionales de Columbia, S.A.* ("Helicol"),[38] the Texas Supreme Court concluded that the exercise of jurisdiction over Helicol was consistent with due process

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31. *See* O'Brien v. Lanpar Co., 399 S.W.2d 340, 342 (Tex. 1966).

32. *See id.* at 342.

33. *Id.* at 342. The Texas Supreme Court indicated several factors in the third prong which could be considered when determining the fairness and justice of exercising jurisdiction. Such factors include the quality, nature, and extent of the defendant's activity, the relative convenience of the parties, the benefit and protection of the state's law afforded the parties, and the basic equities of the situation. *See id.* at 342.

34. 553 S.W.2d 760 (Tex. 1977).

35. *See id.* at 762.

36. *See id.* at 762. The confusion over which due process test should be used by Texas courts was generated in part by the discussion of two different tests by the Texas Supreme Court in *U-Anchor*. *See id.* at 762. The first test mentioned in *U-Anchor* originated from the Fifth Circuit Court of Appeals decision in Products Promotions, Inc. v. Cousteau, 495 F.2d 483, 494 (5th Cir. 1974). The *Cousteau* test includes two steps. *See id.* at 494. One writer has remarked that "the criterion of whether the cause of action arises from the contacts is notably missing." *See* Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 SW. L.J. 747, 760 (1976). The second test discussed by the Supreme Court in *U-Anchor*, and the test it apparently applied, was the three-step *O'Brien* test. *See* U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762-63 (1977). As a result of the discussion of two different due process tests in *U-Anchor*, the decision did not provide clear guidance as to when or if the *O'Brien* test should be used. *See, e.g.*, Prejean v. Sonatrach, Inc., 652 F.2d 1260, 1266 (5th Cir. 1981) (distinguishing *O'Brien* as interpretation of Illinois law and therefore not applicable to Texas cases); Quiroz v. McNamara, 585 S.W.2d 859, 863 (Tex. Civ. App.—Tyler 1979, no writ) (*O'Brien* test not applicable when defendant commits tort in Texas); Michigan Gen. Corp. v. Mod-U-Kraf Homes, Inc., 582 S.W.2d 594, 596 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.) (both *Costeau* and *O'Brien* tests discussed).

37. *See* U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (Tex. 1977). Since the defendant's cause of action in *U-Anchor* was connected with his contacts with Texas, the court did not have to rule on whether the nexus requirement was statutorily or constitutionally based. *See id.* at 762. As a result, the exact nature or origin of the nexus requirement was in doubt and such confusion was reflected in the decisions of several courts. *Compare* Jim Fox Enters. v. Air France, 664 F.2d 63, 63-64 (5th Cir. 1981) (nexus between cause of action and defendant's contacts is required by article 2031b) *with* Siskind v. Villa Found. for Educ., Inc., 624 S.W.2d 803, 807 (Tex. Ct. App.—Houston [14th Dist.] 1981), (nexus between cause of action and contacts not required by statute but a constitutional consideration) *rev'd*, 26 Tex. Sup. Ct. J. 78 (Nov. 6, 1982).

38. 638 S.W.2d 870 (Tex. 1982).

standards.[39] The four-justice plurality,[40] joined by two concurring justices,[41] held that the Texas long-arm statute, article 2031b, extends jurisdictional power to the limits permitted by due process.[42] The justices interpreted the language of article 2031b[43] as not requiring a direct relationship between the defendant's acts and the cause of action.[44] Neither is a close relationship between the defendant's purposeful contact with the forum state and the cause of action a strict constitutional requirement.[45] The plurality held that the numerous business activities of Helicol in Texas[46] were sufficient minimum contacts to allow jurisdiction even though unrelated to the cause of action.[47] Relying on the United States Supreme Court's holding in *World-Wide Volkswagen v. Wood-*

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39. *See id* at 874.

40. *See id* at 870. Justice Wallace authored the plurality opinion, joined by Justices Spears, Ray, and Sondock.

41. *See id.* at 874 (Campbell, J., concurring). Implicit in the concurring opinion is agreement with the interpretation of article 2031b and the due process analysis of the plurality. *See id.* at 874.

42. *See id.* at 872. The plurality quoted from the court's opinion in U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (Tex. 1977), in which the court specifically adopted the language of Hoppenfeld v. Crook, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) which states that "the reach of art. 2031b, is limited only by the United States Constitution." *See* Hoppenfeld v. Crook, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.).

43. *See* TEX. REV. CIV. STAT. ANN. art. 2031b, § 4 (Vernon Supp. 1982).

44. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 872 (Tex. 1982) (quoting U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (1977)). *See generally* Thode, *In Personam Jurisdiction: Article 2031b, the Texas "Long-Arm" Jurisdiction Statute; and the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEX. L. REV. 279, 308 (1964) (discussion of historical interpretation of article 2031b).

45. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 872 (Tex. 1982). The plurality, joined by the concurring justices, stated that the nexus between the cause of action and the defendant's contacts "is a necessary requirement where the nonresident defendant only maintained single or few contacts with the forum . . . [but] unnecessary when the nonresident defendant's presence in the forum through numerous contacts is of such a nature, as in this case, so as to satisfy the demands of the ultimate test of due process." *Id.* at 872.

46. *See id.* at 871-72. The plurality noted that Helicol: (1) purchased most all of its helicopters in Texas, (2) bought about $4,000,000 worth of equipment, parts, and services from Bell Helicopters in Texas from 1970 through 1976, (3) engaged in negotiations in Texas with a Texas resident which "resulted in the contract to provide helicopter services involving the crash leading to this cause of action," (4) purchased liability insurance payable in American currency, (5) sent pilots to Texas to get the helicopters it had purchased, (6) had maintenance personnel and pilots trained in Texas, (7) had employees in Texas year-round, (8) received $5,000,000 from a Texas bank pursuant to the contract in question, and (9) directed a Texas bank to make payments under the contract in question. *See id.* at 871-72.

47. *See id.* at 872.

son,[48] the plurality stated that the defendant-forum relationship need only be such that it is reasonable to subject the defendant to the courts of the forum state.[49]

The concurring justices believed the application of the due process test should be relaxed in jurisdictional disputes involving two countries as opposed to disputes between two states.[50] Further, the concurring justices maintained that the inconvenience to Helicol in having to defend itself in Texas did not amount to a denial of due process since Helicol's activities in Texas were substantial and continuous.[51] Moreover, they noted in this regard that Helicol's activities in Texas were purposeful and designed to produce a profit for the corporation.[52]

In a strong dissent, three justices[53] argued that the Texas long-arm statute itself required the cause of action to arise out of the nonresident defendant's contacts with Texas.[54] The dissenters contended that Helicol's Texas activities did not give rise to or generate the cause of action in negligence based on pilot error.[55] They went on to explain that even assuming, arguendo, that the long-arm statute reaches to the limits of due process, constitutional standards would not be satisfied in this case.[56] The dissenting justices concluded that Helicol's activity in Texas

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48. 444 U.S. 286, 292 (1980).

49. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 873 (Tex. 1982). The plurality construed *World-Wide Volkswagen* as authority for allowing courts to consider several relevant factors when determining this reasonableness. *See id.* at 873. The plurality, consequently, considered Texas' interest in settling this dispute and found that Texas has an interest in "protecting the employees of its 'residents' (Williams-Sedco-Horn)" and "as a member of the 'interstate judicial system' . . . an interest in obtaining the most efficient resolution of controversies and in furthering fundamental substantive social policies." *Id.* at 873 (quoting Kulko v. Superior Ct. of Calif. 436 U.S. 84, 93 (1978)). Another factor the plurality considered significant was Hall's interest in "obtaining convenient and effective relief." *See id.* at 873.

50. *See id.* at 875 (Campbell, J., concurring).

51. *See id.* at 876 (Campbell, J., concurring). The concurring justices stated that it was not unreasonable to require Helicol, a company with "expertise in international business," to defend itself in a state "where it has conducted multi-million dollars of business." *Id.* at 875 (Campbell, J., concurring). It would be unreasonable to require Hall to seek relief in a foreign country. *See id.* at 875 (Campbell, J., concurring).

52. *See id.* at 877 (Campbell, J., concurring). Thus, the purposeful act requirement of *Hanson* was satisfied. *See id.* at 876-77 (Campbell, J., concurring).

53. *See id.* at 877 (Pope, J., dissenting). Chief Justice Greenhill and Justice Barrow joined Justice Pope in dissent. *See id.* at 877, 883 (Pope, J., dissenting).

54. *See id.* at 877 (Pope, J., dissenting). The dissenting justices concluded that the clear language of article 2031b reveals an intent by the Texas legislature to demand a relationship between the cause of action and the defendant's activities in Texas. *See id.* at 880 (Pope, J., dissenting).

55. *See id.* at 877 (Pope, J., dissenting).

56. *See id.* at 883 (Pope, J., dissenting).

did not amount to the "substantial and continuous" type of activity on which jurisdiction could be based for unrelated causes of action[57] since Helicol had not established a general business presence or principal place of business in Texas.[58] As a consequence, Helicol could not be considered an "insider" and thus "safely relegated to the state's political processes."[59]

The decision by the Texas Supreme Court in *Hall* firmly establishes the position of Texas courts regarding the interpretation of article 2031b.[60] With six justices agreeing that article 2031b extends to the bounds of due process, the construction of the statute is now settled.[61] Since the enactment of 2031b, Texas courts have refused to interpret the statute literally[62] but, instead, have construed it as expanding jurisdiction to the limits allowed under due process.[63] This interpretation allows

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57. *See id.* at 882-83 (Pope, J., dissenting). The United States Supreme Court in *Perkins* held that jurisdiction may be asserted over a defendant who has substantial and continuous activity in the forum state for causes of action unrelated to that activity. *See* Perkins v. Benguet Mining Co., 342 U.S. 437, 446-48 (1952). The dissenting justices in *Hall,* however, asserted that the "term 'substantial and continuous activity' has a distinct meaning when used in the context of due process." *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 882 (Tex. 1982) (Pope, J., dissenting). The defendant's activity is "substantial and continuous" in this context, the dissenters maintain, when it approaches the relationship between a state and its own resident. *See id.* at 882 (Pope, J., dissenting). Such activity is "commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principle place of business for the defendant." *Id.* at 882 n. 8 (Pope, J., dissenting).

58. *See id.* at 882 & n. 8 (Pope, J., dissenting).

59. *Id.* at 882 (Pope, J., dissenting). Thus, the dissenting justices reasoned that the holding in *Perkins* is limited to instances where the nonresident corporation's activities establish a principal place of business or temporary headquarters. *See id.* at 882 n. 8. Since Helicol did not maintain an office or establish Texas as a principal place of business, the dissenting justices concluded that the *Perkins* holding is inapplicable and due process requires a nexus between the cause of action and Helicol's contacts with Texas. *See id.* at 883 (Pope, J., dissenting).

60. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 872 (Tex. 1982). The Texas Supreme Court has consistently held that article 2031b is limited only by the United States Constitution. *See* U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (Tex. 1977).

61. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 872, 874 (Tex. 1982).

62. *See* U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (Tex. 1977) (article 2031b permits jurisdiction to the extent due process allows); Quiroz v. McNamara, 585 S.W.2d 859, 863 (Tex. Civ. App.—Tyler 1979, no writ) (reach of long-arm statute limited only by U.S. Constitution). This construction has been followed by the Fifth Circuit. *See* Great Western United Corp. v. Kidwell, 577 F.2d 1256, 1266 (5th Cir. 1978) (Texas long-arm statute authorizes assertion of personal jurisdiction to limits of due process).

63. *See* Wright Waterproofing Co. v. Applied Polymers of America, 602 S.W.2d 67, 70 (Tex. Civ. App.—Dallas 1980, writ ref'd n.r.e. per curiam) (proper focus in jurisdictional

courts "to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.' "[64]

Besides disagreeing with the interpretation of article 2031b,[65] the dissent differs with the majority on the due process issue.[66] The dissenting justices would not allow jurisdiction for unrelated causes of action unless the defendant establishes the forum state as his major place of business or becomes a "habitual resident."[67] By so doing, the dissent looks to the past when the quantity of business done was the test to determine if the defendant was "present" within the boundaries of the state lines.[68] The United States Supreme Court, however, has consistently rejected this quantitative standard[69] and indicated that the proper focus is "not on whether the corporation was 'present' but on whether there have been 'such contacts of the corporation' " to make it reasonable to assert jurisdiction.[70]

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challenges is federal requirements for due process); Rosemont Enters. v. Lummis, 596 S.W.2d 916, 920 (Tex. Civ. App.—Houston [14th Dist.] 1980, no writ) (jurisdiction under 2031b allowed to extent of constitutional limitations). *But see* Jim Fox Enters. v. Air France, 664 F.2d 63, 63-64 (5th Cir. 1981) (Texas long-arm statute restricts exercise of jurisdiction to causes of action arising from defendant's contact with Texas).

64. U-Anchor Advertising v. Burt, 553 S.W.2d 760, 762 (Tex. 1977).

65. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 877 (Tex. 1982) (Pope, J., dissenting).

66. *See id.* at 882-83 (Pope, J., dissenting).

67. *See id.* at 882 n. 8 (Pope, J., dissenting).

68. *See, e.g.,* People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 87 (1918) (corporation's contacts must be such that it is "present" in forum state); Philadelphia & R. Ry. v. McKibbin, 243 U.S. 264, 265 (1917) (nonresident corporation must have contacts with state to such extent that it's considered "present"); International Harvester Co. of Am. v. Kentucky, 234 U.S. 579, 589 (1914) (activities of corporation must be such that they manifest its "presence" within state). The United States Supreme Court, while adopting the minimum contacts test in *International Shoe*, labeled the "presence" theory a legal fiction. *See* International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945). The Court explained that when a corporation was deemed "present" for jurisdictional purposes, the activities of the corporation justified the fiction. *See id.* at 318.

69. *See id.* at 319. The Supreme Court stated that "the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative." *Id.* at 319; *see also* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978) (no mechanical standard can be used to determine reasonableness); Shaffer v. Heitner, 433 U.S. 186, 204 (1977) (jurisdiction inquiry not susceptible of mechanical application).

70. *See* Shaffer v. Heitner, 433 U.S. 186, 203 (1977). In *International Shoe,* the Court noted that the nature or amount of business done does not have to be such that the forum state becomes, in effect, the corporation's home or principal place of business. *See* International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945). The Court indicated that "a trial *away from its 'home' or principal place of business* is relevant" in determining the reasonableness of asserting jurisdiction. *See id.* at 317. [Emphasis added].

In contrast, the majority in *Hall* follows the jurisdictional due process review of recent United States Supreme Court decisions in which the primary focus has been on the fairness and reasonableness of exercising jurisdiction.[71] When utilizing this "overall reasonableness" standard within the minimum contacts due process test, the facts of each case must be analyzed[72] as there is no sole determinative factor or objective test which determines reasonableness.[73] The function of the nexus, or minimum contact requirement, is to indicate a fair and reasonable assertion of jurisdicton over the defendant and thereby satisfy the demands of due process.[74] The particular facts of *Perkins v. Benguet Consolidated Mining Co.*[75] point to a reasonable assertion of jurisdiction in that case, and do not, as the dissenters claim, point to a quantitative measure of doing business required for unrelated causes of action.[76] One may argue that the holding in *Perkins* encompasses situations where the corporation main-

71. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (defendant's conduct and connection with forum state should be such that he could reasonably anticipate being sued there); Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978) (essential criterion is whether "it is reasonable and fair to require [defendant] to conduct his defense in that State"); Shaffer v. Heitner, 433 U.S. 186, 203-04 (1977) (inquiry into whether reasonable to exercise jurisdiction and rejection of mechanical formula).

72. *See* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978); Edwards v. Gulf Mississippi Marine Corp., 449 F. Supp. 1363, 1368 (S.D. Tex. 1978).

73. *See, e.g,* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978) (minimum contacts test not susceptible to mechanical application); Shaffer v. Heitner, 433 U.S. 186, 204 (1977) (mechanical evaluation of activities cannot determine reasonableness); International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (minimum contacts test cannot be mechanical or quantitative).

74. *See* International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945). The reasoning behind the minimum contacts test is that it does not offend due process to assert jurisdiction over a defendant who has enjoyed the benefits of state law by conducting activities there. *See id.* at 319. In *International Shoe,* the Supreme Court concluded that "sufficient contacts or ties with the state of the forum . . . make it reasonable and just to assert jurisdiction." *Id.* at 320.

75. 342 U.S. 437, 447-48 (1952). In *Perkins,* the Benguet Mining Co. was located and did business in the Philippine Islands. The company's operations halted during W.W.II and the president of the company moved to Ohio. He maintained an office, conducted business and had bank accounts in the state of Ohio. *See id.* at 448. The cause of action did not arise from any of the corporations's activities in Ohio. *See id.* at 447.

76. *See id.* at 445. When deciding if a state may exercise jurisdiction over a defendant for causes of action unrelated to the defendant's activity in the state, the Supreme Court indicated that the "*amount and kind* of activities which must be carried on by the foreign corporation . . . so as to make it reasonable and just to subject the corporation to the jurisdiction of that state *are to be determined in each case.*" *Id.* at 445. [Emphasis added]. *Compare id.* at 445 (amount of unrelated activities sufficient for assertion of jurisdiction determined on case-by-case basis) *with* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 882 (Tex. 1982) (Pope, J., dissenting) (unrelated activities must always be of such nature that defendant is considered "resident" of state).

tains a substantial and continuous business relationship with the forum state.[77] A corporation would no less reasonably anticipate a lawsuit in a state in which it establishes a substantial and continuous business relationship than it would in a state where the corporation is licensed to do business.[78] The very nature and quality of the corporation's activity itself gives it a reasonable expectation of having to litigate in that state regardless of whether the cause of action is related to that activity.[79]

The dissent criticized the *Hall* majority's reasoning as allowing satisfaction of the nexus requirement by a showing of substantial and continuous activity instead of minimum contacts.[80] This assessment of the majority's rationale is not accurate because the minimum contacts test is applied by the majority and the nexus requirement can be satisfied by a showing of substantial and continuous activity.[81] The minimum contacts test applied by the majority is the standard applied to all jurisdictional disputes regardless of the nature or quantity of the defendant's activities.[82] Mini-

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77. *See, e.g.*, Black v. Acme Mkts., Inc. 564 F.2d 681, 683, 685 (5th Cir. 1977) (jurisdiction asserted over corporation with substantial purchases in Texas although cause of action unrelated to activities and corporation had no office or employees in Texas); Wilkerson v. Fortuna Corp., 554 F.2d 745, 747, 750 (5th Cir. 1977) (jurisdiction asserted for unrelated cause of action despite fact defendant had no business facilities in state); Navarro v. Sedco, Inc., 449 F. Supp. 1355, 1359, 1362 (S.D. Tex. 1978) (jurisdiction allowed over corporation with no office, property, or employees in Texas but with numerous purchases in Texas even though cause of action unrelated to purchases). *But see* Blount v. Peerless Chem. (P.R.), Inc., 316 F.2d 695, 698 n.3 (2d Cir. 1963) (continuous purchases in state alone not sufficient basis for asserting jurisdiction).

78. *See, e.g.*, Wilkerson v. Fortuna Corp., 554 F.2d 745, 748 (5th Cir. 1977) (substantial and continuous activity in Texas by New Mexico company virtually a two-state venture); Jetco Elec. Indus. v. Gardiner, 473 F.2d 1228, 1234 (5th Cir. 1973) (defendant charged with knowledge that advertisements would be introduced in forum because of substantial activity there); Baird v. Bell Helicopter Textron, 491 F. Supp. 1129, 1136 (N.D. Tex. 1980) (defendant's contacts with forum such that possibility of lawsuit was reasonably foreseeable and not surprise).

79. *See* Shaffer v. Heitner, 433 U.S. 186, 218 (1977) (Stevens, J., concurring). As Justice Stevens wrote "[t]he requirement of fair notice . . . includes fair warning that a particular activity may subject a person to the jurisdiction of a foreign sovereign. *If I visit another State* . . . I knowingly assume some risk that the State will exercise its power over my property or my person while there. *My contact with the State, though minimal, gives rise to predictable risks.*" *Id.* at 218 (Stevens, J., concurring) [Emphasis added].

80. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 883 (Tex. 1982) (Pope, J., dissenting).

81. *See id.* at 872. The majority, therefore, did apply the minimum contacts test and concluded that Helicol's substantial and continuous activity were sufficient contacts to satisfy the minimum contacts test. *See id.* at 872.

82. *See, e.g.*, Shaffer v. Heitner, 433 U.S. 186, 196, 212 (1977) (applying minimum contacts test to quasi in rem jurisdictional challenges); McGee v. International Life Ins. Co., 355 U.S. 220, 222-23 (1957) (minimum contacts test applied when cause of action related to defendant's isolated activities); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 446

mum contacts in this regard is not minimal or isolated contacts, but a determination of a fair and reasonable assertion of jurisdiction considering the relationship between the forum state, the defendant, and the lawsuit.[83] The minimum contacts test is not replaced by a showing of substantial and continuous activity, rather, it is satisfied in this instance by such activity and other "affiliating circumstances."[84]

The decision in *Hall* was not based solely on Helicol's activity in Texas, but also on the plaintiffs' interests in obtaining convenient and effective relief.[85] The only alternative available to the plaintiffs was to seek redress in Peru,[86] and an "estimate of the inconveniences"[87] certainly reveals that it would be relatively less inconvenient for Helicol to travel to Texas than

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(1952) (minimum contacts test applied when cause of action unrelated to defendant's substantial and continuous activities).

83. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 882 (Tex. 1982) (Pope, J., dissenting). When discussing the type and amount of activity that the dissenters thought constituted "substantial and continuous" activity, they remarked that "[a]chievement of such a position obviously requires more of the defendant than 'minimum contacts.' " *Id.* at 882 (Pope, J., dissenting). The United States Supreme Court, however, has never required more than a showing of minimum contacts. *See* International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945). Minimum contacts, thus, is a legal conclusion based upon the facts of each case, and the amount or kind of activities which meet this standard will vary accordingly. *See e.g.,* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978) ("facts of each case must be weighed to determine if requisite affiliating circumstances are present"); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 445 (1952) (substantial and continuous activity constitute sufficient minimum contacts for unrelated cause of action); Reich v. Signal Oil & Gas Co., 409 F. Supp. 846, 849, 850 (S.D. Tex. 1974) (defendant had "numerous and substantial" contacts, but not sufficient minimum contacts under circumstances). *But see* Waterval v. District Ct., 620 P.2d 5, 9 (Colo. 1980) (referring to minimum contacts as single act or few contacts).

84. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 872 (Tex. 1982); *see also* Navarro v. Sedco, Inc., 449 F. Supp. 1355, 1362 (S.D. Tex. 1978) (substantial and continuous activity will satisfy minimum contacts test); Ruppman Mktg. Servs. v. Polyglycoat Corp., 526 F. Supp. 264, 267 (C.D. Ill. 1981) (minimum contacts test satisfied with substantial activity). *But see* Cornelison v. Chaney, 545 P.2d 264, 267 (Calif. 1976) (substantial and continuous activity does not constitute sufficient minimum contacts).

85. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 873 (Tex. 1982). The court relied on *McGee v. International Life Ins. Co.*, and recognized the difficulties of an individual filing a suit in a foreign forum, "thus in effect making the company judgment proof." *See id.* at 873 (quoting McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957)); *see also* Kulko v. Superior Ct. of Calif., 436 U.S. 84, 92 (1978).

86. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 875 (Tex. 1982) (Campbell, J., concurring).

87. *See* International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945). The United States Supreme Court indicated that "an 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant" to the determination of the reasonableness of exercising jurisdiction. *See id.* at 317 (quoting L. Hand, J., in Hutchinson v. Chase & Gilbert, 45 F.2d 139, 141 (2d Cir. 1930)).

for the plaintiffs to go to Peru.[88] The concurring justices' contention that due process should be broader in scope in jurisdictional disputes between two countries[89] does not stand for the proposition, as the dissenters suggest, that foreigners do not have the same due process right as United States citizens.[90] Rather, this is simply one factor which affects the plaintiff's ability to obtain a remedy which, in turn, is one consideration regarding the reasonableness of exercising jurisdiction.[91]

The state's interest in protecting its citizens was another factor on which the majority based jurisdiction.[92] Although the reasoning was admittedly weak since the plaintiffs were not residents of Texas,[93] the state does have just as great, if not more, of an interest in providing a forum than other states since Helicol was involved in Texas' economic system and the deceased employees were hired in Texas by a Texas firm.[94]

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88. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 25 Tex. Sup. Ct. J. 190, 195 (Feb. 24, 1982) (Wallace, J., dissenting), *opinion withdrawn,* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 875 (Tex. 1982). Helicol executives and other personnel made numerous trips to Texas to carry on negotiations, make purchases, or receive training. *See id.* at 195 (Wallace, J., dissenting). Although neither party would be convenienced by a suit in another country, it would certainly be less inconvenient for Helicol to return to Texas once more to defend themselves in court rather than for all of the plaintiffs to go to Peru. *See id.* at 195 (Wallace, J., dissenting).

89. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 875 (Tex. 1982) (Campbell, J., concurring).

90. *See id.* at 883 (Pope, J., dissenting).

91. *See* Product Promotions, Inc. v. Cousteau, 495 F.2d 483, 498 (5th Cir. 1974); Rockwell Int'l Corp. v. KND Corp., 83 F.R.D. 556, 564 (N.D. Tex. 1979); *cf.* Cornelison v. Chaney, 545 P.2d 264, 269, 127 Cal. Rptr. 352, 357 (1976). In *Cornelison,* the defendant's business involved "a high degree of interstate mobility and require[d] extensive multi-state activity. The existence of an interstate business . . . [was] relevant to considerations of fairness and reasonableness. The very nature of defendant's business balances in favor of requiring him to defend here." *See* Cornelison v. Chaney, 545 P.2d 264, 269, 127 Cal. Rptr. 352, 357 (1976).

92. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 873 (Tex. 1982). The United States Supreme Court has stated that the interest of the forum state can and should be considered in jurisdictional disputes. *See* McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957); *see also* Carter Oil Co. v. Apex Towing Co., 532 F. Supp. 364, 369 (E.D. Ark. 1981) (forum state interests important factor in jurisdictional disputes). Like the plaintiff's interest, however, the interest of the forum state is only one factor evidencing or supporting reasonableness and jurisdiction cannot be based on this factor alone. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294 (1980); *see also* Ruppman Mktg. Servs. v. Polyglycoat Corp., 526 F. Supp. 264, 266 (C.D. Ill. 1981) (interest of forum state cannot be pursued beyond degree of fairness to defendant).

93. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 877 (Tex. 1982) (Pope, J., dissenting). The plurality, however, categorized the joint venture, Williams-Sedco-Horn, as a "resident" of Texas and stated Texas has an interest in protecting the employees of its "residents." *See id.* at 873.

94. *See id.* at 871. The deceased employees and plaintiffs were from several different

Helicol, furthermore, purposefully entered the state to extract a profit.[95] In addition to the contract in question, Helicol entered into other sales, employment, and personnel training contracts with Texas businesses.[96] Helicol certainly availed itself of the benefits and privileges of the Texas judicial system.[97]

The decision in *Hall* clarifies the Texas Supreme Court's approach to jurisdictional challenges. The interpretation of article 2031b as extending to the limits of due process is finally settled. Until a contrary intent is indicated by the Texas legislature, a nonresident defendant may still fall within the grasp of the "long-arm" of the Texas courts for litigation not arising from the defendant's activity in the state. Furthermore, the *Hall* decision reveals that the *O'Brien* test is not the exclusive mode of due process review; therefore, in some cases it must yield to the "ultimate" measure of due process, the fair and reasonable standard of the minimum contacts test. The *Hall* decision permits a more flexible jurisdictional inquiry while preserving the due process rights as defined and articulated by the United States Supreme Court. Although a mechanical application of constitutional principles is virtually impossible to formulate, the Texas Supreme Court in *Hall* has adopted an approach which reflects the current concept of due process in allowing consideration of the variety of

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states, and since there was no evidence that Helicol had any contacts with these states, it is doubtful that their courts could exercise jurisdiction over Helicol. *See id.* at 871. Since Helicol did have contacts with Texas, that state may be the only possible forum for the plaintiffs to litigate their claim. *See id.* at 873 (stating that Texas has interest in "obtaining the most efficient resolutions of controversies" and furthering social policies). In any event, Texas has a comparatively greater interest than other states in providing a forum for the plaintiffs. *See* Chattanooga Corp. v. Klinger, 528 F. Supp. 372, 378 (S.E. Tenn. 1981) (comparing forum state's interests with those of other states).

95. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 877 (Tex. 1982) (Campbell, J., concurring). Helicol took advantage of and derived benefits from Texas businesses. *See id.* at 877 (Campbell, J., concurring). If a corporation travels to a foreign state to transact business or make a profit there, then it would not be unfair to require it to conduct its defense there also. *See* Vencedor Mfg. Co. v. Gougler Indus., 557 F.2d 886, 893 (1st Cir. 1977). In *Vencedor*, the court suggested that it might be fair to "impose the burden of distant litigation only on those who obtain significant benefits from frequent interstate transactions." *Id.* at 893.

96. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 871 (Tex. 1982). Not all of the sales contracts with Bell Helicopter were made pursuant to the contract with the joint venture, Williams-Sedco-Horn. *See id.* at 871. The sales contracts were initiated in 1972 while the contract with the joint venture was negotiated in 1976. *See id.* at 871.

97. *See* Hall v. Helicopteros Nacionales de Columbia, S.A. ("Helicol"), 638 S.W.2d 870, 871 (Tex. 1982). Helicol could have invoked the protection of Texas laws by petitioning a Texas court to enforce any of its contracts with the Texas businesses. *See id.* at 877 (Campbell, J., concurring).

factors which are relevant to the exercise of jurisdiction over the interests of persons.

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