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Current Status of Personal and General Jurisdiction in Minnesota

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STUDENT NOTE

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INTRODUCTION

Minnesota’s long-arm statutes have been effective for nearly forty years. During this time, these statutes have provided a basis for determining personal jurisdiction guidelines. However, recently the Minnesota appellate courts, the Minnesota Federal District Courts, and the United States Supreme Court have handed down a number of personal jurisdiction decisions affecting the interpretation of these statutes. These decisions have altered the personal jurisdiction standards to the point where practicing attorneys may no longer realize what exactly is required to establish jurisdiction.

The concept of “general” jurisdiction has become the focus

of extensive debate and is viewed by some commentators as "one of the most intriguing developments in judicial analysis of personal jurisdiction over the last five years..."2 The categories of general and specific jurisdiction, at present, remain vague and confusing. In 1988, the Minnesota Federal District Court addressed the issue of general jurisdiction in two significant cases.3 Although these decisions offer some guidance in distinguishing between general and specific jurisdiction, the present status and scope of general jurisdiction remains unclear. Without sufficient direction from higher courts, the lower courts have been unable to come to a consensus as to what is necessary to establish general jurisdiction.4

This comment will examine the expansion of personal jurisdiction law by outlining the history of personal jurisdiction and general jurisdiction, concentrating on decisions which have modified those jurisdictional standards. The comment will also interpret Minnesota's long-arm statutes, and the recent conflict concerning general jurisdiction. Finally, this comment will discuss the practical implications of recent personal and general jurisdiction decisions, including both the procedural and tactical aspects.

2. Twitchell, The Myth of General Jurisdiction, 101 HARV. L. REV. 610, 610 (1988). The terms general and specific jurisdiction "have become the touchstones of contemporary personal jurisdiction analysis." Id. at 611. See also Brilmayer, A General Look at General Jurisdiction, 66 TEX. L. REV. 721 (1988). The Editor states that specific jurisdiction has received most scholars' attention, "leaving general jurisdiction a powerful yet largely unexplored theory." Id. at 723.

General jurisdiction involves suits in which a defendant is engaged in continuous forum related activity; however, its cause of action does not arise from that activity. Specific jurisdiction concerns cases where the cause of action arises from origins related to the defendant's activity. General jurisdiction is established by regular, systematic and continuous contacts; while specific jurisdiction is satisfied by the minimum contacts test. Twitchell, supra, at 610. See D. CRUMP, W. DORSANE0, O. CHASE & R. PERSCHBACHER, CASES AND MATERIALS ON CIVIL PROCEDURE 71 (1987).

3. Larson v. G.D. Searle & Co., 683 F. Supp. 1277 (D. Minn. 1988). This court also found sufficient connection between the defendant's contact with the forum and the plaintiff's cause of action to justify personal jurisdiction under Minnesota statute § 543.19. The court denied the defendant's motion to transfer to Iowa District Court. Id. at 1278. In Hoppe v. G.D. Searle & Co., 683 F. Supp. 1271 (D. Minn. 1988), the court found a sufficient connection between the defendant's forum contact and the plaintiff's cause of action to justify personal jurisdiction under Minnesota statute § 543.19. However, the case was transferred to New York Federal District Court pursuant to 28 U.S.C. § 404 (a). Id. at 1272.

4. See R. CASAD, JURISDICTION IN CIVIL ACTIONS, ¶ 3.02[2][a], n.274 (Supp. 1986).
I. PERSONAL JURISDICTION

A. Personal Jurisdiction History

Personal jurisdiction concerns the court’s power over a person, in most cases the defendant, whereas subject matter jurisdiction refers to the court’s power to hear and determine a case, as defined by the state’s constitution and legislation. The original notions of personal jurisdiction began over a century ago when the United States Supreme Court referred to the doctrine of territoriality in Pennoyer v. Neff.

It was not until over sixty-five years later in 1945 that the United States Supreme Court, in the leading case of International Shoe Co. v. Washington, made a move toward broadening a state’s personal jurisdiction over foreign corporations. International Shoe set forth the “minimum contacts” standard, which to this day is articulated in nearly every personal jurisdiction decision. In the Court’s often quoted words:

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

7. 95 U.S. 714 (1877). Exercising jurisdiction over the defendant was based upon either actual physical presence within the court’s jurisdiction or the defendant’s consent to the court’s jurisdiction over her. Id. at 734. The Supreme Court referred to this as the doctrine of territoriality, in that a state court could assert personal jurisdiction over a nonresident defendant only if the defendant was located within the forum’s territorial boundaries. Id. at 722–23. The doctrine was also referred to as the sovereign power theory, where the sovereign has authority over anything within its borders and nothing outside of them. Id.

The Pennoyer Court stated that the due process clause of the fourteenth amendment was violated where a court rendered a personal judgment against a nonresident defendant without having jurisdiction over that defendant. Id. at 733.

9. Id. at 316. The Supreme Court did not overrule Pennoyer’s doctrine of territoriality, but instead retained only a trace of territoriality necessary to satisfy due process requirements.
10. Id. at 316 (citing Milliken v. Meyer, 311 U.S. 457, 463 (1940)).
11. Id. Minimal contacts are defined as:

That doctrine of jurisdiction which provides that before a foreign corporation is subject to suit in a state such corporation’s activity within the state must meet basic activity requirements. For nonresident to be subject to state’s personal jurisdiction, he must have certain minimum contacts with
The Supreme Court held, in general, that a corporation conducting business in the forum, which has availed itself of the benefits and protections of the forum state's laws must also bear certain risks, including the risk of litigation.\(^\text{12}\)

It was another ten years before the Supreme Court expanded the scope of state jurisdiction over nonresident defendants. *McGee v. International Life Ins. Co.*\(^\text{13}\) established that due process is not violated when a state asserts personal jurisdiction over a nonresident defendant on the basis of a single or isolated transaction.\(^\text{14}\)

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\(^\text{12}\) See *International Shoe*, 326 U.S. at 319.

\(^\text{13}\) 355 U.S. 220 (1957).

\(^\text{14}\) *Id.* at 223. The Supreme Court in *McGee* sustained state jurisdiction over a foreign corporation, solely on the basis of a single insurance contract made with a resident of the forum state. *Id.* The corporate defendant's only contact with the forum was its assumption of an insurance policy and receipt of payments on the policy entered into with a forum resident. The Court did put great emphasis on the nature of the contract, because it was one of insurance. *Id.* The *McGee* Court added that social conditions of the times suggested a less restrictive standard of personal jurisdiction than had been acceptable in the past:

Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transporta-
The Court held that it is enough that the suit be based on a single contract having substantial contacts with the state. The McGee Court emphasized the importance of the forum’s interest in protecting its residents and the relative convenience of the forum as well as the International Shoe standards.

In the following term, the Supreme Court suggested a limitation on the minimum contacts standard. In Hanson v. Denckla, the Supreme Court held that more is required than mere “unilateral activity” with the nonresident defendant is required to establish personal jurisdiction. The defendants must also “purposefully avail” themselves to the advantages of the forum state. The hidden result was to limit the potential reach of McGee.

B. Recent Supreme Court Personal Jurisdiction Decisions

From 1958, when Hanson was decided, until 1977, the Supreme Court did not issue any major decisions in the area of personal jurisdiction. Since 1977, it has issued eleven such decisions. These decisions, however, do not set forth clear
standards for assertion of personal jurisdiction. Four commonly cited Supreme Court cases establish new standards in personal jurisdiction. In 1980, the United States Supreme Court again clarified the "minimum contacts" doctrine and adopted the "stream of commerce" theory for products liability cases in *World-Wide Volkswagen Corp. v. Woodson.*21 The products liability claim filed in Oklahoma against a New York automobile retailer and wholesaler, involved a vehicle purchased in New York and a collision which occurred while the vehicle was being driven through Oklahoma.22 The Supreme Court granted certiorari and, in a six to three decision, reversed the Oklahoma Supreme Court's decision that personal jurisdiction was established by Oklahoma's "long-arm" statute.23 The Court held that the contacts between the vehicle retailer and wholesaler and the State of Oklahoma were insufficient to sustain jurisdiction.24 In essence, the Court separated the minimum contacts standard into two requirements. First, the jurisdiction must be reasonable.25 Second, the jurisdiction must be based on minimum contacts between the defendant and the forum state.26

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22. *Id.* at 288. The members of the family riding in the vehicle, residents of New York, were injured after being hit by another vehicle.
23. *Id.* at 291.
24. *Id.* at 299.
25. *Id.* at 292.
26. *Id.* at 294. The Court pointed out that due process considerations prohibit a state from taking jurisdiction over "an individual or corporate defendant with which the state has no contacts, ties or relations." *Id.* (quoting *International Shoe Co. v.*
World-Wide Volkswagen Corp. introduced the standard that a corporation is subject to the personal jurisdiction of a forum state if it delivers its products into the “stream of commerce.” However, the Court found that even though it was foreseeable that a vehicle sold by the New York wholesaler or retailer might find its way to Oklahoma, that alone was not sufficient to support jurisdiction. The Court stated that absent some purposeful availment by the nonresident defendant of the “privilege[s] of conducting activities in the forum State,” due process does not allow the assertion of personal jurisdiction over the nonresident defendant solely based on the plaintiff’s “unilateral” activity over which the defendant has no control.

Under a strict application of the World-Wide Volkswagen holding, the fact that a defendant placed its product into the “stream of commerce” would not subject the defendant to personal jurisdiction absent some advance knowledge or clear intention by the defendant that the product would be used in the forum state. The World-Wide Volkswagen decision has been used by the Minnesota Supreme Court to limit the expansion of state courts’ jurisdiction by emphasizing the relevancy of territoriality and de-emphasizing the importance of fairness to the defendant.

Washington, 326 U.S. 310, 319 (1945)). Also, “[t]he protection against inconvenient litigation is typically described in terms of ‘reasonableness’ or ‘fairness.’” Id. at 292. 27. “The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” Id. at 297–98.

28. Id. at 298. The Court explained that:

This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.

Id. at 297 (emphasis added).

The Court reasoned in World-Wide Volkswagen, that there must be a “degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” Id. The majority believed that the dealer and retailer did not reasonably anticipate being haled into court in Oklahoma even though they were dealing with a product designed to be highly mobile. Id. at 295.

29. Id. at 297 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)). 30. West Am. Ins. Co. v. Westin, Inc., 337 N.W.2d 676, 678–79 (Minn. 1983). The Minnesota Supreme Court held that a Wisconsin border city vendor of intoxicating liquor did not have the requisite minimum contacts with Minnesota when the
In 1985, the United States Supreme Court in *Helicopteros Nacionales de Colombia, S.A. (Helicol) v. Hall* held that a Colombian helicopter corporation's contacts with Texas were insufficient to satisfy the due process clause of the fourteenth amendment. Therefore, the Texas court could not exercise personal jurisdiction over the Colombian corporation. The majority divided its holding into two sections. First, purchases occurring at regular intervals did not satisfy the state's assertion of personal jurisdiction over a nonresident corporation in an action unrelated to those purchases. Second, sending personnel to a forum state for training related to those purchases did not increase the Colombian corporation's contacts with that forum state. The dissent strongly disagreed, stating that the Colombian corporation's contacts with the forum were directly related to the underlying cause of action by the corporations act of "purposefully availing" itself of the benefits and protections of the forum state.

The court in *West Am. Ins. Co.* refers to *Rush v. Savchuk*, decided the same day as *World-Wide Volkswagen*. *Rush* involved the issue of whether a state could exercise jurisdiction over a defendant with no forum contacts by looking to the defendant's insurer who was licensed to do business in the state and had a duty to defend and indemnify its insured. *Rush v. Savchuk*, 444 U.S. 320, 322 (1980). The United States Supreme Court held that jurisdiction did not exist. *Id.* at 333. Following *World-Wide Volkswagen* and *Rush*, the critical focus in any jurisdictional analysis must be on " the relationship among the defendant, the forum and the litigation." *Rush*, 444 U.S. at 327 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

31. *Helicopteros Nacionales de Colombia, S.A. (Helicol) v. Hall*, 466 U.S. 408, 419 (1984). Helicol is a Colombian helicopter corporation providing transportation for an oil and construction company headquartered in Texas and working on a pipeline in Peru. A helicopter crashed in Peru in 1976, killing four people. *Id.* at 409–10. Representatives of the deceased filed suit in Texas and Helicopteros moved to dismiss for lack of personal jurisdiction. The motion was denied and the jury awarded over $1,140,000 to representatives of the deceased. *Id.* at 412. The case was reversed by the Texas Court of Appeals and reversed again by the Supreme Court of Texas. *Id.* at 409. The decision of the Supreme Court of Texas was reversed by the United States Supreme Court. *Id.* at 419.

32. The majority found that the Colombian company's contacts were insufficient to establish personal jurisdiction. The contacts consisted of: purchasing helicopters, equipment and training services in Texas; sending personnel to Texas for training and for contract negotiations; and accepting into its New York bank account checks from a Texas bank. *Id.* at 416. See *Helicol*, infra notes 107–115 and accompanying text.

33. *Id.* at 423–24 (Brennan, J., dissenting). The dissent pointed out that:
A year later, the United States Supreme Court in *Burger King Corp. v. Rudzewicz* held that a Michigan resident, who entered into a franchise agreement with a corporation headquartered in Miami, had subjected himself to the personal jurisdiction of Florida in two ways: first, by establishing a substantial, continuing relationship with the Miami headquarters, and second, by receiving notice from the contract agreements and the fair course of dealing, that he may be subjected to suit in Florida. Justice Brennan quoted all the minimum contacts standards by pointing out that personal jurisdiction is justified where the cause of action "arises out of" or "relates to actions" of the nonresident defendant that are "purposely directed" toward the forum state's residents, and which do not offend the notion of "fair play and substantial justice." *Burger King* has been criticized as relying on ambiguous legal conclusions without providing specific definitions, which does not help a potential defendant predict how each court will interpret the jurisdictional requirements.

In *Burger King*, the Court used the term "substantial connection" to describe the relationship necessary between the defendant and the forum state. Even though the defendant did not have offices in Florida, nor had he ever visited the state, the Court pointed out that the dispute "grew directly out of a

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34. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 487 (1985). The majority opinion in *Burger King* was written by Justice Brennan who had dissented in *Hanson v. Denckla*, *World-Wide Volkswagen*, and *Helicol*. Justice Brennan recognized the concept of "purposeful availment," and pointed out the distinction between general and specific jurisdiction.


36. See *Quest For A Bright Line Personal Jurisdiction Rule in Contract Disputes—Burger King Corp. v. Rudzewicz*, 61 WASH. L. REV. 703 (1986):

However, it is virtually impossible for a potential defendant to predict how a judge will characterize a particular activity. As a result, contracting parties have inadequate information on which to base decisions about where and when to conduct their commercial activities if they want to avoid subjecting themselves to suit in a particular forum.

contract which had a substantial connection with that state." 38

Personal jurisdiction was also satisfied in Florida because the defendant failed to demonstrate how jurisdiction in that state would be "fundamentally unfair." 39 According to the dissent, however, it would be extremely unfair to the defendant who would be unable to afford the costs of a suit in Florida, coupled with the difficulty and expense of calling Michigan witnesses to the state. 40

In 1987, the United States Supreme Court was able to tackle the personal jurisdiction issue again in Asahi Metal Industry Co. v. Superior Ct. 41 For the first time, the Supreme Court faced the question of whether foreign nonresidents were subject to a different test in establishing personal jurisdiction than that used for American nonresidents. The Court reversed the California Supreme Court's decision, concluding that the state court's exercise of personal jurisdiction over the Japanese corporation would be in violation of the due process clause. 42 The majority centered on the uniqueness of a personal jurisdiction conflict in an international context and the special burdens that would be placed on the international defendant in such a setting. 43 The Court held that even though the Japanese corporation knew that some of its products would be used in automobile tires sold in California, the facts still did not establish the necessary minimum contacts for California to assert personal jurisdiction consistent with the principles of "fair play and substantial justice." 44

The holding in Asahi Metal Industry demonstrated that minimum contacts are obviously necessary, but are not sufficient to

40. Id. at 489-90. The majority chose not to consider the fact that Burger King could easily afford the costs of litigation in the defendant's home state and instead focused on the defendant's actions to "deliberately 'reach[ed] out beyond' Michigan and negotiate with a Florida corporation ...." Id. at 479 (quoting Travelers Health Ass'n. v. Virginia, 339 U.S. 643, 647 (1950)).
42. Id. at 108, 116.
43. Id. at 114.
44. Id. at 116. The Japanese corporation did not "purposefully avail" itself to the California market. The mere placement of a product into the stream of commerce is not such an act as to warrant the minimum contacts necessary in an action "purposefully directed" to the forum state. Id. at 112.
satisfy the due process requirements of personal jurisdiction. \textsuperscript{45} For the first time since adopting the "purposeful availment" standard, the \textit{Asahi Metal Industry} Court denied personal jurisdiction to a defendant who "purposely availed itself of [only] the benefits and burdens of doing business in the forum." \textsuperscript{46} The Court was "[u]nable to agree on the minimum contacts issue," \textsuperscript{47} and shifted its focus from the stream of commerce argument to prohibiting jurisdiction "under the reasonableness element of the \textit{International Shoe} standard. . . ." \textsuperscript{48} It was considered unfair to subject the foreign defendant corporation to personal jurisdiction in the United States for placing its products into the general "stream of commerce," rather than the specific stream of commerce of the forum state.

The Minnesota courts were monitoring the changes and additions to the standards of personal jurisdiction in the Supreme Court. At the same time, however, the courts in Minnesota were establishing their own guidelines in an attempt to clarify the personal jurisdiction process.

\section*{C. Minnesota Personal Jurisdiction Analysis}

\subsection*{1. Minnesota Judicial Analysis}

State and Federal Courts in Minnesota have set forth what has now become known as the "Five Factor Test." This test uses the minimum contacts standard established by the United States Supreme Court and examines the constitutionality of personal jurisdiction over nonresidents. \textsuperscript{49} The five factors

\textsuperscript{45} See Maltz, \textit{Unraveling the Conundrum of the Law of Personal Jurisdiction: A Comment on Asahi Metal Industry Co. v. Superior Court of California}, 1987 \textit{Duke L. J.} 669. "Asahi Metal Indus. Co. thus clearly establishes that the existence of minimum contacts is a necessary but not sufficient condition to satisfy the constitutional requirements for personal jurisdiction. In all cases, the court must also test the facts against equitable notions of 'fair play and substantial justice.'" \textit{Id.} at 681.

\textsuperscript{46} \textit{Id.} at 679.

\textsuperscript{47} \textit{The Supreme Court 1986 Term—Leading Cases}, 101 \textit{Harv. L. Rev.} 119, 261 (1987). The case "alters the focus of debate in stream-of-commerce cases. Because \textit{Asahi Metal Indus. Co.} left unresolved the longstanding disagreement over what constitutes minimum contacts in such cases, the case will encourage lower courts to deny jurisdiction on the ground of unreasonableness alone whenever possible." \textit{Id.} at 265. \textit{See also Jurisdiction: Personal Jurisdiction Over Alien Corporations—Asahi Metal Industry Co. v. Superior Court of California}, 29 \textit{Harv. Int'l. L.J.} 207 (1988).

\textsuperscript{48} \textit{The Supreme Court 1986 Term—Leading Cases}, supra note \textsuperscript{47}, at 261.

\textsuperscript{49} The courts use these five factors to determine whether \textit{International Shoe's} "traditional notions of fair play and substantial justice" are adhered to, while assert-
first set forth in *Aftanase v. Economy Baler Co.*,\(^5\) are: (1) the quantity of the contacts;\(^5\) (2) the nature and quality of the contacts;\(^5\) (3) the source and connection of the claim with those contacts;\(^5\) (4) the interest of Minnesota in providing a forum for litigation of the dispute;\(^5\) and (5) the convenience of the parties.\(^5\)

50. 343 F.2d 187, 197 (8th Cir. 1965). The five factors were first identified in *Aftanase v. Economy Baler Co.*, by Justice Blackmun who was an Eighth Circuit judge at the time.

51. *Id.* at 197. To determine whether the quantity of the contacts is sufficient, courts look at those contacts between the nonresident defendant and the state that are both related and unrelated to the claim. *See, e.g.*, First Nat'l Bank v. White, 420 F. Supp. 1331, 1334-35 (D. Minn. 1976) (no personal jurisdiction where related contacts with forum were only through an agency and the unrelated contacts with state were through a loan transaction and written agreement with the state); American Pollution Prevention Co. v. National Alfalfa Dehydrating & Milling Co., 304 Minn. 191, 195, 290 N.W.2d 63, 65 (1975).

A single contact may be sufficient to establish personal jurisdiction. However, in that case the quality and nature of that single contact becomes dispositive. Johnson v. Sel-Mor Distributing Co., Inc., 430 N.W.2d 495, 497 (Minn. Ct. App. 1988) (citing Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 295 (Minn. 1978)).

52. *Aftanase*, 343 F.2d at 197. The courts examine the quality and nature of the contacts by describing the defendant's contact and determining the potential effect of the contact in the state. The more routinely and regularly a nonresident defendant conducts business with the state, the greater the nature and quality of those contacts. *See, e.g.*, Hardrives, Inc. v. City of LaCrosse, 307 Minn. 290, 295-98, 240 N.W.2d 814, 817-19 (1976); *American Pollution Prevention Co.*, 304 Minn. at 195, 230 N.W.2d at 66.

53. *Aftanase*, 343 F.2d at 197. This factor relates to the connection between the contacts with the state and the cause of action. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). A defendant's connection with the forum must be such that the defendant could reasonably anticipate being haled into court in that forum. *Id.* Hardrives, Inc., 307 Minn. at 298, 240 N.W.2d at 819. The contact does not have to be a direct cause of the action in order to constitute an adequate source and connection. It is sufficient that the consequences of the act were foreseeable. However, it is not essential to find a contact related to the cause of action if contacts are substantial with respect to quantity and quality. *Id.*

54. Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965). The state's interest in the litigation is strong when the claims if pursued out of state would be unlikely to be heard. *Cf.* Northern States Pump & Supply Co. v. Baumann, 311 Minn. 368, 374, 249 N.W.2d 182, 186 (1976); Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc., 291 Minn. 251, 255-56, 190 N.W.2d 670, 674 (1971).

55. *Aftanase*, 343 F.2d at 197. The convenience of the parties is analyzed by balancing the interests of the plaintiff in having the case tried in a particular forum against the inconvenience of the nonresident defendant in defending in the plaintiff's forum. The convenience is generally measured by examining the travel involved and the location of the witnesses and evidence. *See, e.g.*, B & J Mfg. Co. v. Solar Indus., Inc., 483 F.2d 594, 599 (8th Cir. 1973); Thompson v. Kiekhaefer, 372 F. Supp. 715, 720 (D. Minn. 1973); Independent School Dist. No. 454 v. Marshall Stevens Co., 337...
The Five Factor Test is not intended to be "mechanically applied." Instead, the courts generally hold that the first three factors receive primary consideration and the last two, because of their subject matter, receive secondary consideration. State and federal courts in Minnesota almost universally employ the Five-Factor Test in conflicts of personal jurisdiction. The test serves as an appropriate balance between contradicting policies of controlling those activities affecting state residents, while at the same time, controlling unreasonable jurisdictional claims over nonresidents. "When the question is close [regarding whether the court can exercise personal jurisdiction over a defendant] doubts are to be resolved in favor of jurisdiction."

Courts applying Minnesota law have followed two guidelines when analyzing personal jurisdiction. First, courts consider

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F. Supp. 1278, 1288-89 (D. Minn. 1971) (convenience of the parties is only relevant if the defendant suffers "exceptional hardship" or an "inordinate burden"). Franklin Mfg. Co. v. Union Pacific R.R., 297 Minn. 181, 184-85, 210 N.W.2d 227, 230 (1973) (factor five is only dispositive if the inconvenience to either party is extensive); Johnson v. Sel-Mor Distributing Co., Inc., 430 N.W.2d 495, 498 (Minn. Ct. App. 1988).

56. Austad Co. v. Pennie & Edmonds, 823 F.2d 223, 226 (8th Cir. 1987). "[A]pplication of these factors does not provide a slide rule by which fundamental fairness can be ascertained with mathematical precision." Id. (quoting Toro Co. v. Ballis Liquidating Co., 572 F.2d 1267, 1270 (8th Cir. 1978)).

57. Austad Co., 823 F.2d at 226. See also Aaron Ferer & Sons Co. v. American Compressed Steel Co., 564 F.2d 1206, 1210 n.5 (8th Cir. 1977); Gardner Eng'g Corp. v. Page Eng'g Co., 484 F.2d 27, 31 (8th Cir. 1973); Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 295 (Minn. 1978).


59. See Due Process, supra note 19, at 304.


61. Larson v. Association of Apt. Owners of Lahaina Shores, 606 F. Supp. 579, 581 (D. Minn. 1985) (attempt to exercise personal jurisdiction in Minnesota over Hawaiian defendants for injuries suffered by plaintiff in Hawaii violated due process and requirements of the long-arm statute). See also Sherburne County Social Serv. ex
whether the facts of the disputed case satisfy the state long-arm statute. If the facts do not fall within the standards of the long-arm statute, then the state may not assert personal jurisdiction over the nonresident. Second, if the facts do fall under the state long-arm statute, courts consider whether personal jurisdiction would be consistent with the due process requirements. The courts by applying this two step process are striving toward consistency in personal jurisdiction decisions. Although the two-step process provides guidance, decisions by the Minnesota courts are included in the personal jurisdiction confusion.

2. Minnesota Long-Arm Statutes

In response to the more flexible minimum contacts standards, many state legislatures have enacted personal jurisdiction statutes or long-arm statutes. The due process standard is most often incorporated within the interpretation of the state long-arm statutes. Generally, all long-arm statutes pro-

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63. Id. at 581-82.
64. Long-arm statutes are defined as:
   Various state legislative acts which provide for personal jurisdiction, via substituted service of process, over persons or corporations which are nonresidents of the state and which voluntarily go into the state, directly or by agent, or communicate with persons in the state, for limited purposes, in actions which concern claims relating to the performance or execution of those purposes. . . .
BLACK'S LAW DICTIONARY 849 (5th ed. 1979).
vide a means for service of process on a nonresident defendant, who has either committed an act in the state, or an act outside the state, which actually affects the state. A state court may narrowly construe its long-arm statute and refuse to exercise personal jurisdiction over a nonresident. Federal courts are then bound by a state court's interpretation of its own long-arm statute.

Both the federal courts and the Minnesota state courts have asserted on numerous occasions that the scope of the long-arm statutes is intended to expand the Minnesota courts' reach over nonresidents to the maximum amount consistent with due process. The determination of whether jurisdiction is

66. See Due Process, supra note 19, at 312. The principles of the long-arm statutes are the same, whether the cause of action occurs in the forum state or the cause of action occurs outside the forum, but somehow affects that forum.

67. "[T]o the extent that state courts might give a long-arm statute a more limited construction than federal due process requires, a federal court is bound by that construction, even though the Fourteenth Amendment might permit a broader construction." Annotation, Products Liability: In Personam Jurisdiction Over Nonresident Manufacturer or Seller under "Long-Arm" Statutes, 19 A.L.R.3d 13, 25 (1968) [hereinafter Annotation, Products Liability—Jurisdiction] (footnote omitted). See Mechanical Contractors Ass'n of America, Inc. v. Mechanical Contractors Ass'n of N. Cal., Inc., 342 F.2d 393, 398 (9th Cir. 1965). "[W]e are governed by the decisions of the Supreme Court of California as to the scope and meaning of the California Statute." Id.

68. The federal cases include: Land-O-Nod Co. v. Bassett Furniture Indus. Inc., 708 F.2d 1338, 1340 (8th Cir. 1983) (Minnesota mattress manufacturer lacked personal jurisdiction over Virginia corporation under the state long-arm statutes); Toro Co. v. Ballas Liquidating Co., 572 F.2d 1267, 1269 (8th Cir. 1978) (no jurisdiction over Texas corporation where only contacts with Minnesota were "wholly unrelated" to the claim); B & J Mfg. Co., Inc. v. Solar Indus., 483 F.2d 594, 598 (8th Cir. 1973) (liberal construction of Minn. Stat. § 543.19 to determine whether cause of action arises from business transaction in state).

Minnesota cases stating that the long-arm statute extends personal jurisdiction to maximum limits permitted by due process include: Rostad v. On-Deck, Inc., 372 N.W.2d 717, 719 (Minn. 1985) (company's contracts and marketing efforts to establish a national market are sufficient contacts for Minnesota jurisdiction); Vikse v. Flaby, 316 N.W.2d 276, 281 (Minn. 1982) (fiduciary obligations regarding a mortgage satisfaction are sufficient contacts for jurisdiction); Northern States Pump & Supply Co. v. Baumann, 311 Minn. 368, 374, 249 N.W.2d 182, 186 (1976) (lease of equipment and visits to state support assertion of jurisdiction consistent with due process); State ex. rel. Nelson v. Nelson, 298 Minn. 438, 441, 216 N.W.2d 140, 143 (1974) (more than an allegation of fatherhood is required to convey jurisdiction); Franklin Mfg. Co. v. Union Pacific R.R., 297 Minn. 181, 183, 210 N.W.2d 227, 229 (1973) (maintaining office with purpose of soliciting business is sufficient contacts); Ellwein v. Sun-Rise, Inc., 295 Minn. 109, 111, 203 N.W.2d 403, 405 (1972) (home office and Minnesota being focal point of all communication are sufficient contacts); Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc., 291 Minn. 251, 254, 190 N.W.2d 670, 673 (1971) (no jurisdiction over company no longer licensed in Minnesota when accident occurred outside Minnesota); Hunt v. Nevada State
consistent with due process rests on the facts of each individual case. In addition, the court considers to what extent the due process clause limits a state's power over nonresidents.

Minnesota presently has two long-arm statutes, sections 303.13, subd. 1 (3), and 543.19. The older service of pro-

Bank, 285 Minn. 77, 110, 172 N.W.2d 292, 311 (1969) (physical presence not needed to commit a tortious act in state necessary to convey jurisdiction); Brown County Family Service Center v. Miner, 419 N.W.2d 117, 119 (Minn. Ct. App. 1988) (telephone calls and letters sent to Minnesota held insufficient to satisfy constitutional requirements for exercise of personal jurisdiction); In re Shipowners Litigation, 361 N.W.2d 112, 115 (Minn. Ct. App. 1985) (single meeting in state and correspondence related to meeting insufficient contacts); Thompson v. First Nat'l Bank of St. Paul, 360 N.W.2d 446, 448 (Minn. Ct. App. 1985) (sufficient contacts to confer jurisdiction where defendant purposefully availed himself by allowing his name to be used and by appearing at a basketball camp).


70. See Annotation, Products Liability—Jurisdiction, supra note 67, at 45.

71. The relevant portions of Minn. Stat. § 303.13, subd. 1 (3) provide as follows:

(3) If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if a foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of the contract or tort. . . . The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of the contract or tort. . . . The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is so served upon the secretary of state shall be of the same legal force and effect as if served personally on it within the state of Minnesota.


72. Minn. Stat. § 543.19 states:

Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or the individual's personal representative, in the same manner as if it were a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual:

(a) Owns, uses, or possesses any real or personal property situated in this state, or
(b) Transacts any business within the state, or
(c) Commits any act in Minnesota causing injury or property damage, or
(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or
(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or
(3) the cause of action lies in defamation or privacy.
cess statute, section 303.13, subd. 1 (3), applies only to foreign corporations. The scope of section 303.13, subd. 1 (3) is narrower than the personal jurisdiction statute, section 543.19, which applies to both foreign corporations and nonresident individuals. Also, the personal jurisdiction statute, unlike the older foreign corporation statute, does not require the plaintiff to be a Minnesota resident. Despite the obvious differences in the language, courts have not distinguished the application of the personal jurisdiction statute from the service of process statute.\textsuperscript{73}

While section 543.19 asserts personal jurisdiction over nonresidents in a broad range of situations, section 303.13 subd. 1 (3), a single-act statute,\textsuperscript{74} is much more restricted in its application. Single-act statutes, adopted in a large number of states,\textsuperscript{75} expand jurisdiction over nonresidents in the case of an isolated act done by the nonresident within the forum state. In Minnesota, under the single-act statute it is generally required that a portion of the tort occurs within the state.\textsuperscript{76} If a tort does occur within the state, a nonresident corporation may be served through a resident agent or if there is no resident agent,

\textsuperscript{73} Due Process, supra note 19, at 314 (footnote omitted).

\textsuperscript{74} See Annotation, Products Liability—Jurisdiction, supra note 67, at 21.


\textsuperscript{76} See, e.g., Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 169–71 (D. Minn. 1969) (no personal jurisdiction where foreign corporation’s only contact with forum was that the injury occurred in the forum); Dahlberg Co. v. American Sound Products, Inc., 179 F. Supp. 928, 932 (D. Minn. 1959) (lack of personal jurisdiction where foreign corporation’s only contact was advertising and warranty in forum state).
through the office of the secretary of state.\textsuperscript{77}

The personal jurisdiction statute may be applied to nonresidents and may be asserted by nonresidents.\textsuperscript{78} Under section 543.19, Minnesota courts have personal jurisdiction over a foreign corporation transacting business in the state, as long as the cause of action "arises from" the corporation's contact with the state.\textsuperscript{79} Therefore, the statute requires a connection between the cause of action and the activity "giving rise" to the jurisdiction.\textsuperscript{80} When the determination of whether to assert jurisdiction is uncertain, courts hold that doubts should be resolved in favor of finding jurisdiction.\textsuperscript{81}

Several Minnesota cases have interpreted the application of the personal jurisdiction statute to foreign corporations. For

\begin{itemize}
\item \textsuperscript{77} MINN. STAT. § 303.13, subd. 1 (2) (1988 & Supp. 1989).
\item \textsuperscript{78} Minnesota Statute § 543.19 includes all nonresidents, individuals, and corporations. See, e.g., Ellwein v. Sun-Rise, Inc., 295 Minn. 109, 110, 203 N.W.2d 403, 405 (1972) (personal jurisdiction statute was applied to a nonresident director).
\item \textsuperscript{80} Larson v. Association of Apt. Owners of Lahaina Shores, 606 F. Supp. 579, 583 (D. Minn. 1985) (Minnesota statute § 543.19 requires connection between cause of action and the activity "giving rise" to the jurisdiction). See also Collyard v. Washington Capitals, 477 F. Supp. 1247, 1250 (D. Minn. 1979) (party must demonstrate that defendant's action giving rise to claim arises from act enumerated in the statute); Tunnell v. Doelger & Kirsten, Inc., 405 F. Supp. 1338, 1340 (D. Minn. 1976) ("statutory requirement of a nexus between the cause of action asserted and the acts of a non-resident which can confer jurisdiction"); Real Properties, Inc. v. Mission Ins. Co., 427 N.W.2d 665, 668 (Minn. 1988) ("it is not enough that contacts are 'random', 'fortuitous' or 'attenuated' " (citations omitted)); Janssen v. Johnson, 358 N.W.2d 117, 120 (Minn. Ct. App. 1984) (personal jurisdiction improper where Wisconsin bar owner's only contact with Minnesota was purchasing some supplies from the state); Maiers Lumber & Supply, Inc. v. Chancey Trailers, 354 N.W.2d 585, 587 (Minn. Ct. App. 1984) (no personal jurisdiction over Florida corporation whose only contact with the state was the sale and delivery of six trailers).
\item \textsuperscript{81} Helten v. Arthur J. Evers Corp., 372 N.W.2d 380, 383 (Minn. Ct. App. 1985) ("doubt should be resolved in favor of retention of jurisdiction") (quoting Hardrives, Inc. v. City of LaCrosse, 307 Minn. 290, 296, 240 N.W.2d 814, 818 (1976)).
\end{itemize}
example, in *Rostad v. On-Deck, Inc.*, the court applied both the *World-Wide Volkswagen* standard and Minnesota statute section 543.19. The court found that a manufacturer who places a product into the “stream of commerce,” expecting the product to be used in another jurisdiction, is subject to personal jurisdiction in that state. In 1988, however, the Minnesota Court of Appeals held in *Olmsted County v. Trailer Equipment Warehouses, Inc.*, that there was no personal jurisdiction over a nonresident defendant where the only contact with the state was general knowledge that the stream of commerce “might” take its product into the state.

These two cases provide a good illustration that there are no easy answers to personal jurisdiction questions. While the decisions apply the same general standards, whether jurisdiction is proper turns on the specific facts of each case. Therefore, practicing attorneys will find inconsistent rules of law from

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82. 372 N.W.2d 717 (Minn. 1985).
83. Id. at 721. *Rostad* involved an action by a baseball umpire against an out-of-state manufacturer of a ring-shaped baseball bat weight. The umpire was injured when the weight flew off a bat and hit him in the head. Sale of the bat rings to a national distributor of sporting goods for sale throughout the United States in retail stores, including Minnesota, was sufficient contacts to establish jurisdiction. Id. at 718-19.
84. *Olmsted County v. Trailer Equip. Warehouses, Inc.*, 421 N.W.2d 395, 398 (Minn. Ct. App. 1988). The defendant’s sole connection to Minnesota was a trailer hitch manufactured, sold and installed in Oklahoma, “which made its way through the stream of commerce to Minnesota and injured a Minnesota resident.” Id. at 396.
85. See *Land-O-Nod Co. v. Bassett Furniture Indus.*, Inc., 708 F.2d 1338, 1341 (8th Cir. 1983) (sales activity of Virginia corporation in Minnesota did not establish personal jurisdiction over the corporation under the state long-arm statutes); *Iowa Elec. Light & Power Co. v. Atlas Corp.*, 603 F.2d 1301, 1303 (8th Cir. 1979) (Iowa Electric’s payment, record-keeping, ordering, and notice activities in Iowa were insufficient to assert personal jurisdiction over Atlas); *United States v. Advance Mach. Co.*, 547 F. Supp. 1085, 1093 (D. Minn. 1982) (“whether a corporation is an instrumentality or an alter ego of another corporation presents primarily an issue of fact to be determined upon the peculiar facts of each case”); *Scott v. Mego Int’l, Inc.*, 519 F. Supp. 1118, 1126 (D. Minn. 1981) (personal jurisdiction is proper for parent company where companies were organized so that one company was the “instrumentality or adjunct of the other”); *Dotterweich v. Yamaha Int’l Corp.*, 416 F. Supp. 542, 547 (D. Minn. 1976) (the positions of the two defendants must be analyzed separately to determine where exercise of jurisdiction is proper); *Curry v. McIntosh*, 389 N.W.2d 224, 228 (Minn. Ct. App. 1986) (no personal jurisdiction over Canadian company where the injuries did not occur in Minnesota and the Canadian company’s contacts were insufficient); *Wilkie v. Allied Van Lines, Inc.*, 398 N.W.2d 607, 610 (Minn. Ct. App. 1986) (jurisdiction defense proper where outstate corporation committed no act in state or outside state which caused property damage in state); *Helten v. Arthur J. Evers Corp.*, 372 N.W.2d 380, 383 (Minn. Ct. App. 1985) (shipping to plants known to be located throughout the country should be enough to establish minimum
similar cases, and must compile as many facts as possible regarding their party's own contacts to support a personal jurisdiction argument.

II. ROLE OF GENERAL JURISDICTION IN PERSONAL JURISDICTION CLAIMS

A. United States Supreme Court Examines General Jurisdiction

General jurisdiction involves suits in which a defendant is engaged in continuous forum related activity, however, the cause of action does not arise from that activity.86 Specific jurisdiction concerns cases in which the cause of action arises from or is related to the defendant’s activity.87 General jurisdiction is established by regular, systematic and continuous contacts, while specific jurisdiction is satisfied by the standard minimum contacts test.88 Therefore, a single, isolated contact may be sufficient for specific jurisdiction because the claims have a "nexus" with the activity.89 General jurisdiction involves adjudicating a claim centered outside the forum. However, only a direct relationship between the forum and the nonresident defendant justifies general jurisdiction.90 In addition, the activities of the nonresident defendant must be substantial, and not sporadic or occasional, in order for the forum state to assert jurisdiction.91

The terms general and specific jurisdiction were created in
reaction to evolving standards and requirements of personal jurisdiction. Professors von Mehren and Trautman first introduced the two categories to provide some direction in the various courts' attempts to recognize the importance of asserting jurisdiction based on the connection between the nonresident's forum and the dispute.

It has been difficult for courts to apply general jurisdiction with any consistency. Some commentators believe there are specific reasons for the confusion. First, courts are unsure of the meaning of general jurisdiction. Second, courts are not in agreement about whether it is fair to assert specific jurisdiction over nonresident defendants with some continuous and systematic contacts with the forum, when the claim is only "tenuously" connected to the contacts. This uncertainty involving specific jurisdiction has caused many courts to simply rely on general jurisdiction as the only alternative.

In all cases, the relevant question is whether general or specific jurisdiction applies. A plaintiff attempting to apply a distant forum's law because it is more favorable, may face difficulties in general jurisdiction cases because more contacts are required and because of the potential difficulty in applying a preferred forum state's law.

93. Multistate Problems, supra note 92, at 652-56, 711. General jurisdiction is described as jurisdiction based on the relationship between the forum and one of the parties, regardless of the nature of the dispute. Id. at 654. Specific jurisdiction is jurisdiction based on the relationship between the forum and the controversy. Id. von Mehren & Trautman distinguished general and specific jurisdiction: [A]ffiliations between the forum and the underlying controversy normally support only the power to adjudicate . . . issues deriving from, or connected with, the very controversy that establishes jurisdiction . . . . This we call specific jurisdiction. On the other hand, American practice for the most part is to exercise power to adjudicate any kind of controversy when jurisdiction is based on relationships, direct or indirect, between the forum and the person or persons whose legal rights are to be affected. This we call general jurisdiction.

von Mehren & Trautman, supra note 89, at 1136.
94. Twitchell, supra note 2, at 611.
95. Id. at 611 and n.10.
96. Id. at 611 and n.11.
97. See Allstate Ins. Co. v. Hague, 449 U.S. 302, 308 (1981) (decision to apply a state's substantive law is unconstitutional if choice of that state's law is unfair or arbitrary, based on how the contacts between the parties, the occurrence, and the state are connected). See also von Mehren & Trautman, Constitutional Control of Choice of Law: Some Reflections on Hague, 10 Hofstra L. Rev. 35, 37-39 (1982). "The Supreme
In *International Shoe*, the United States Supreme Court briefly addressed the concept of general jurisdiction. The Court pointed out that there may be situations where a corporation's continuous activities within a state may be substantial enough to justify a cause of action "arising out of" activities entirely unrelated to those continuous activities, without offending traditional notions of due process. Constitutional considerations underlying jurisdiction requirements allow the assertion of general jurisdiction, even in those causes of action not "arising from" the activities in the forum state.

Only two cases in the Supreme Court's history have addressed general jurisdiction at any length. In 1952, the Supreme Court acknowledged general jurisdiction in *Perkins v. Benguet Consolidated Mining Co.* The Court held that jurisdiction was constitutional where the defendant's forum activities were "continuous and systematic," even though the claim was unrelated to those activities and was brought by a nonresident plaintiff. In coming to its decision, the Court listed all the defendant's forum activities and came to the unexplained conclusion that they were sufficient to support jurisdiction. The phrase "continuous and systematic" became the accepted standard for general jurisdiction.

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99. *Id.* at 318.
100. *See* Helicopteros Nacionales de Colombia, S.A. (Helicol) v. Hall, 466 U.S. 408, 414 (1984). The Court contrasted this with specific jurisdiction where a state may exercise personal jurisdiction over a defendant only in a suit "arising out of" the defendant's contacts with the forum state. *Id.* at 414 n.8.
102. 342 U.S. at 438.
103. *Id.* at 448. The company's mining operations, located in the Philippine Islands, were shut down during the Japanese occupation of the islands during World War II. The company's president returned to his home in Ohio. From there he maintained the business, which included: holding directors' meetings, banking, writing business correspondence, paying salaries and purchasing machinery. *Id.* at 447-48.
104. *Id.*
105. *Id.*

Sometimes courts rephrase the standard. *See, e.g.*, Gehling v. St. George's
The United States Supreme Court's reasoning in *Helicol*, also centered on the distinction between general and specific jurisdiction.\(^{107}\) The Court held that general jurisdiction is constitutional, if the necessary contacts between the forum state and the defendant corporation are present.\(^{108}\) The defendant in *Helicol* was a Colombian corporation, that had purchased helicopters and parts in Texas, sent its pilots to Texas for training and also negotiated its contract in the state.\(^{109}\) One of the Texas-manufactured helicopters crashed in Peru while performing services under the contract.\(^{110}\) The survivors of four American passengers killed in the crash filed suit in Texas.\(^{111}\) The case was complicated by the fact that the defendant was a Columbian corporation and the accident occurred in Peru.\(^{112}\)

The *Helicol* controversy started in the Texas courts,\(^{113}\) and eventually found its way to the United States Supreme Court. The Supreme Court on certiorari explained that because the plaintiffs claim against Helicol did not "arise out of" and was not related to Helicol's activities within the state, the only issue concerned general jurisdiction; whether Helicol's contacts with the forum were "continuous and systematic."\(^{114}\) The Court listed Helicol's contacts with the forum in some detail, and then quickly concluded such contacts were insufficient to sup-

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107. 466 U.S. at 414-16.
108. Id. at 414.
109. Id. at 409-11.
110. Id. at 409-10.
111. Id. at 410.
112. Id. at 409-10. Even though the claim did not "directly arise" out of the defendant's contacts with Texas, the claim was related to those contacts. The dispute arose out of the activity which formed the basis for Helicopteros' connections with Texas.
114. *Helicol*, 466 U.S. at 415-16.
port general jurisdiction.\textsuperscript{115} Unfortunately, the Supreme Court’s decision in \textit{Helicol} failed to clarify the general jurisdiction theory or the contacts necessary to support general jurisdiction.

Lower courts in nearly twenty states, including Minnesota, have used the general jurisdiction theory to assert jurisdiction over nonresident defendants.\textsuperscript{116} Most of these courts seem comfortable with the notion that specific jurisdiction is justified in a claim related to the nonresident defendant’s forum contacts, as long as the defendant has sufficient contacts with the forum. In general jurisdiction cases, the courts require more “continuous and substantial” contacts.\textsuperscript{117} The courts appear to avoid in-depth analysis. Instead, courts simply list the nonresident defendants’ contacts, and draw conclusions about whether those contacts qualify as general jurisdiction.\textsuperscript{118}

\textbf{B. Minnesota Examines General Jurisdiction}

Minnesota courts have yet to expressly recognize what is called general jurisdiction. Even though the issue has been raised in a number of cases, it has been left unresolved. There is disagreement in the Minnesota courts over the application of Minnesota statute section 543.19, subdivision 3.\textsuperscript{119} The language in question states that only those causes of action which “arise from” the nonresident defendant’s transaction of business in the forum state may be asserted against a defendant where jurisdiction is based on subdivision 1(b) of the statute.\textsuperscript{120} The Minnesota Supreme Court seems to suggest that the “arising from” language does not preclude asserting jurisdiction where the defendant’s contacts, although unrelated to the cause of action, are substantial enough to reasonably expect the defendant to appear in the forum.\textsuperscript{121} However, there

\textsuperscript{115} Id. at 418.
\textsuperscript{116} See Twitchell, supra note 2, at 630 for a list of states.
\textsuperscript{117} See generally Brilmayer, supra note 91; Twitchell, supra note 2.
\textsuperscript{119} See supra note 72.
\textsuperscript{120} See supra note 72.
\textsuperscript{121} See, e.g., Rostad v. On-Deck, Inc., 372 N.W.2d 717, 722 (Minn. 1985) (defendant’s sales in Minnesota weighed in favor of asserting jurisdiction); Marquette Nat’l Bank v. Norris, 270 N.W.2d 290, 294 (Minn. 1978) (defendants’ borrowing money in Minnesota favored asserting jurisdiction); Harddrives, Inc. v. City of La-
are several Minnesota Court of Appeals decisions which have expressly relied on the nexus requirement in subdivision 3 to decline personal jurisdiction.122

The Minnesota Court of Appeals recognized in 1985 that it is essential in any general jurisdiction argument that the foreign corporation must reasonably anticipate being "haled into" the forum state's court.123 This type of foreseeability is acknowledged within the due process analysis. The court suggests that it may be evidenced through substantial contacts in the forum state.124 Also in 1985, the Minnesota Federal District Court held that in order to assert personal jurisdiction under Minnesota Statute section 543.19 and the due process clause, the plaintiff must prove that the nonresident defendant transacted business in the state, and that the plaintiff's injuries "arose from" the plaintiff's activities in the state.125

In 1986, in Busch v. Mann, a plaintiff was involved in an accident in Wisconsin and attempted to assert personal jurisdiction in Minnesota based on contacts consisting of telephone services to customers in Minnesota.126 The Minnesota Court of Appeals upheld the trial court's ruling that personal jurisdiction could not be asserted unless the nexus requirement in the language of section 543.19, subdivision 3 was satisfied.127 The court in Busch acknowledged that a conflict exists between

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122. See, e.g., Curry v. McIntosh, 389 N.W.2d 224 (Minn. Ct. App. 1986); Hanson v. John Blue Co., 389 N.W.2d 523 (Minn. Ct. App. 1986). The long-arm statute was not satisfied where the cause of action did not arise from the defendant's contacts with Minnesota. The product in John Blue Co. merely passed through Minnesota in a chain of distribution. John Blue Co., 389 N.W.2d at 525-26. Waite v. Waite, 367 N.W.2d 679, 680 (Minn. Ct. App. 1985) (automobile accident in North Dakota was "totally unrelated to respondent's contacts with Minnesota").


125. Erickson ex rel. Erickson v. Spore, 618 F. Supp. 1356, 1359 (D. Minn. 1985) (long-arm jurisdiction was lacking where the only contact was advertising in a small out-of-state publication and the advertisement was not related to the plaintiff's decision to attend a club in the other state).

126. 397 N.W.2d at 392.

127. Id. at 394. Busch argued that even if the statutory nexus requirements of
the Constitution, which allows general jurisdiction in a broad range of situations, and the state long-arm statute, which seems to limit jurisdiction to specific jurisdiction under the language of subdivision 3.128

In *Busch*, the court questioned whether it must decide if there is general jurisdiction.129 The court decided not to resolve this issue, but instead stated that because the plaintiff did not show that the number of customers the defendant serviced in Minnesota amounted to "substantial contacts" with the state, general jurisdiction could not be asserted without violating due process concepts.130 However, the stated test for general jurisdiction is systematic, continuous contacts within the forum, regardless of whether those contacts relate to the cause of action.131 In examining the facts of this case, the business of servicing about ninety-four telephone customers would seem to entail systematic, continuous service and, depending on the size of the company, could also be regarded as "substantial contacts."

The *Busch* decision appears to be based on the notion that the state long-arm statutes were enacted so as to operate to the full extent allowable under constitutional due process limitations. Therefore, it seems that if faced with applying a seemingly more restrictive long-arm statute and due process guarantees of the fourteenth amendment, the result would be to apply the jurisdictional analysis set forth in the Constitution.

In 1988, a federal court in Minnesota heard two personal jurisdiction claims dealing with general jurisdiction which involved the intrauterine device manufacturer G.D. Searle & Co. The facts in *Hoppe v. G.D. Searle & Co.* and *Larson v. G.D. Searle*...
JURISDICTION & Co. are similar in that each case involved a woman who was a resident of a foreign state who wanted to bring a products liability claim in Minnesota.132 Under the general jurisdiction analysis, because the cause of action did not “arise” in Minnesota, both plaintiffs had to prove there were sufficient contacts between G.D. Searle and the state.

The court in *Hoppe* and *Larson* considered whether the “arising from” requirement in Minnesota Statute section 543.19, subdivision 3, must be met in all cases.133 The court attempted at some length to explain what its answer might be and why in this case it did not have to give an answer.

The federal district court in both *Hoppe* and *Larson*, was disturbed by several factors regarding earlier Minnesota Supreme Court opinions. The Minnesota Supreme Court had not specifically acknowledged that the language in section 543.19, subdivision 3, using the “arising from” term, operates as a bar to personal jurisdiction in situations where the nonresident defendant has established substantial forum contacts to satisfy the due process analysis. However, the court had suggested in at least five cases that the language in section 543.19 does not bar jurisdiction if the defendant’s contacts with the forum state, although not connected with the state, are meaningful to the point that it is reasonable to subject the defendant to jurisdiction.134


134. Rostad v. On-Deck, Inc., 372 N.W.2d 717 (Minn. 1985) (nationwide contracts and marketing strategies were sufficient contacts to warrant personal jurisdiction over foreign manufacturer); Marquette Nat’l Bank v. Norris, 270 N.W.2d 290 (Minn. 1978) (personal jurisdiction was justified in forum state where foreign defendant actively initiated negotiations with forum bank); Hardrives, Inc. v. City of La-Crosse, 307 Minn. 290, 240 N.W.2d 814 (Minn. 1976) (personal jurisdiction proper where foreign corporation solicited bids, inspected premises on continual basis and conducted negotiations in forum state); Northwestern Nat’l Bank of St. Paul v. Kratt, 303 Minn. 256, 226 N.W.2d 910 (Minn. 1975) (sufficient contacts with forum where resident of foreign jurisdiction guaranteed loan by forum bank and transacted busi-
The federal district court was concerned that none of the Minnesota Supreme Court decisions expressly acknowledged the validity of general jurisdiction. Also, none of the decisions condemned the nexus requirement of subdivision 3 as unnecessary or excessive. The court was also bothered by the fact that in revising section 543.19 the legislature had the chance to eliminate subdivision 3, yet it consciously choose to include it.

The court in Hoppe and Larson concedes that if it was required to decide whether the “arising from” requirement in section 543.19, subdivision 3 must be met in all cases, it would hold that the plain language interpretation of the statute addresses only specific jurisdiction. The court offers two suggestions: either amend the statute to expressly include the limits of due process or have the Minnesota Supreme Court explicitly acknowledge general jurisdiction. In the occurrence of either suggestion, the Hoppe and Larson court would then apply the nexus requirement.

When addressing the issue of whether Hoppe and Larson's causes of action indeed arose out of G.D. Searle's contact with Minnesota, the court found a nexus in the participation of Minnesota physicians in the company's clinical testing of the intrauterine device. Currently, Minnesota has no definite standard to determine if a cause of action has arisen from the

ness in forum state); Franklin Mfg. Co. v. Union Pac. R.R. Co., 297 Minn. 181, 210 N.W.2d 227 (Minn. 1973) (personal jurisdiction warranted where foreign defendant not authorized to do business in forum had maintained office in forum at one time).


The Eighth Circuit thus far has not confronted the long-arm nexus requirement in Minn. Stat. § 543.19 subd. 3. The court in Hoppe cites Precision Const. Co. v. J.A. Slattery Co., 765 F.2d 114, 118 (8th Cir. 1985), for the proposition that the nexus requirement is of primary importance in evaluating the due process factor, and is also required under the section of the Missouri long-arm statute that is required with subdivision 3 of Minnesota's statute. Hoppe, 683 F. Supp. at 1274.

136. Hoppe, 683 F. Supp. at 1273; Larson, 683 F. Supp. at 1280. In 1978, the Minnesota Legislature amended § 543.19 in an apparent attempt to expand the scope of the long-arm statute along the lines of the due process analysis. The legislature's choice of retaining subdivision 3, however, seems contrary to that amendment. Id. See also supra note 71 and accompanying text.

activity in the state. The physicians' participation in G.D. Searle's clinical testing was viewed as a "tenuous connection." However, the court held such connection was enough to satisfy the nexus standard in section 543.19, subdivision 3, and enough to warrant personal jurisdiction in Minnesota. A literal meaning of the word "tenuous" casts doubt as to whether such connections should be considered sufficient, or should be viewed as unsubstantial and inadequate.

In the future, Minnesota courts and all courts should clearly express the policies underlying specific and general jurisdiction and the proper test for distinguishing the two. Until that happens, inconsistent treatment of personal jurisdiction by American courts will no doubt continue.

III. PRACTICAL CONSIDERATIONS IN ASSERTING PERSONAL AND GENERAL JURISDICTION

A. Procedure

A party must establish personal jurisdiction through the procedures set forth in Rule 4 of the Federal Rules of Civil Procedure. When the defendant in the action is not present in the forum state, the plaintiff may obtain jurisdiction in the method specified by the state in which the court is located. In Minnesota, jurisdiction over nonresidents may be asserted under the long-arm statutes.

Personal jurisdiction actions usually arise when the plaintiff attempts to bring a suit in a forum different from the defendant's forum. If the nonresident defendant then challenges


140. "Tenuous" is defined as not substantial, flimsy. WEBSTER'S NEW WORLD DICTIONARY 616 (1979).

141. FED. R. CIV. P. 4.

142. FED. R. CIV. P. 4 (e), (f).


144. See Mountaire Feeds, Inc. v. Argo Impex S.A., 677 F.2d 651, 654 (8th Cir.)
personal jurisdiction, the burden is on the plaintiff to prove that the appropriate state statute authorizes personal jurisdiction and that the necessary "minimum contacts" exist, justifying jurisdiction under due process analysis. 145

The nonresident defendant may challenge personal jurisdiction by bringing a motion to dismiss under Minnesota Rules of Civil Procedure 12.02(2). 146 The defendant's motion places the burden on the plaintiff to establish that the court has valid jurisdiction over the defendant. 147 Once the plaintiff makes a prima facie showing of sufficient contacts, the burden then shifts to the defendant to demonstrate a lack of jurisdiction. 148

Under Rule 12.02(2), the court views the facts in a light most favorable to the plaintiff in reviewing the defendant's motion to dismiss for lack of personal jurisdiction. 149 The defendant must assert the lack of jurisdiction as a defense in the initial pleading. 150 If the defendant fails to do so, she forfeits the opportunity to assert the defense. 151 The Minnesota Supreme

146. Rule 12.02 provides in part that "[e]very defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (b) lack of jurisdiction over the person. . . ." MINN. R. CIV. P. 12.02.
147. Sausser, 269 N.W.2d at 761 (it is "well-settled" that plaintiff has the initial burden of proof to show minimum contacts); Hardrives, Inc. v. City of LaCrosse, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (plaintiff has burden to prove contacts justify personal jurisdiction). See also Thompson v. Kiekhaefer, 372 F. Supp. 715, 720 (D. Minn. 1973) (plaintiff had burden to show foreign manufacturer had sufficient contacts to warrant personal jurisdiction).
148. See Mountaire Feeds, Inc., 677 F.2d at 653 (citations omitted).
149. See Schermerhorn v. Hoiland, 337 N.W.2d 692, 694 (Minn. 1983) (court acknowledged that plaintiffs might not be able to prove jurisdictional arguments at trial, but that they should have the opportunity); I D. HERR AND R. HAYDOCK, MINNESOTA PRACTICE § 12.06 (1985).
150. See Mississippi Valley Dev. Corp. v. Colonial Enterprises, Inc., 300 Minn. 66, 72, 217 N.W.2d 760, 764 (1974). Corporation in voluntary dissolution waived its defense of improper service after it appeared seeking to enjoin plaintiffs from commencing suit until arbitration or dissolution was complete. The fact that the corporation appealed denial of injunction and waited over sixteen months to assert defense of improper service constituted a waiver. Id. See also Universal Constr. Co. v. Peterson, 280 Minn. 529, 550, 160 N.W.2d 253, 255 (1968) (where Rule 12 applied to mechanics lien without conflict, defendant waived defense by untimely motion to dismiss).
151. MINN. R. CIV. P. 12.08. Rule 12.08(a) states in part that "[a] defense of lack
Court has yet to make a definite ruling as to whether a counterclaim will be construed as a waiver of the lack of jurisdiction defense.¹⁵²

B. Strategy

In addition to the procedural decisions involved in personal jurisdiction actions, the parties are also confronted with numerous tactical decisions concerning which available forum will be most advantageous to their position. An attorney may consider such things as the convenience of representing a plaintiff in a foreign jurisdiction at trial, along with possible attitudes and bias of local jurors toward a defendant in a foreign forum.¹⁵³ For example, in products liability actions, a party may choose a particular forum based on the court’s apparent attitude toward recovery. Factors such as recognizing strict liability and the previous damage awards in similar cases may influence a party’s decision to choose one particular jurisdiction where others are available.¹⁵⁴

An attorney may also consider whether a state long-arm statute or court rule authorizes service of process of a nonresident outside the territory of the forum jurisdiction. This question concerns statutory construction controlled by individual state law. On the other hand, whether a statute violates the due process requirements of the United States Constitution becomes a question of federal law.¹⁵⁵

Not only are there tactical decisions with which a plaintiff must be concerned, but there are also practical considerations. For example, the plaintiff should always be conscious of the applicable statute of limitations. The plaintiff may choose to file suit in the nonresident’s domicile rather than invoke her own long-arm statute, because of a longer statutory period. However, she may not always receive the benefit of the foreign jurisdiction’s statute because some states enact “borrowing statutes”¹⁵⁶ which require a plaintiff suing in a foreign jurisdi-

¹⁵² D. Herr and R. Haydock, supra note 149, at § 12.6.
¹⁵³ See Annotation, Products Liability—Jurisdiction, supra note 67, at 36.
¹⁵⁴ Id. at 36–37.
¹⁵⁵ Id. at 39.
¹⁵⁶ Id. at 37.
tion to comply with the statute of limitations of her own jurisdiction.\textsuperscript{157}

The plaintiff should also use the pretrial discovery process to prove personal jurisdiction over a nonresident defendant. Although it is not always necessary, it is good practice to state in the complaint the necessary facts asserting personal jurisdiction. Depending on the requirements of the state long-arm statute, the plaintiff's complaint may be dismissed for lack of jurisdiction if these facts are not included.\textsuperscript{158} As an extra precaution, in cases that are certain to involve a personal jurisdiction controversy, it is a good practice for the plaintiff to support her jurisdictional claim with an affidavit, in addition to stating the claim in the complaint.

One final consideration for the plaintiff, is not to rely solely on a "single-act" statute to establish the basis for personal jurisdiction over a nonresident defendant.\textsuperscript{159} It is important to illustrate any additional activities in the forum state which may carry some weight in the jurisdictional decision, even though those activities alone do not satisfy the threshold of "doing business" in the forum state.\textsuperscript{160}

A major consideration for the defendant is whether to bring a personal jurisdiction claim opposing the plaintiff's forum choice. A nonresident defendant, facing discovery, may find the cost and inconvenience of producing records and personnel in a foreign state exceed any potential liability. This may discourage a party from continuing litigation.\textsuperscript{161} In addition, the defendant should take caution to avoid actions which may be mistaken as a waiver of the defense of lack of personal jurisdiction. The defendant may be disqualified from a potential personal jurisdiction claim by such actions as failing to file a proper and timely motion in opposition to the jurisdiction.

Even if a defendant is unable to avoid the jurisdiction asserted by the plaintiff, the defendant does have several options available. She may ask the court to decline jurisdiction based on forum non conviens,\textsuperscript{162} or she may make a motion under

\textsuperscript{157} Id.
\textsuperscript{158} Id. at 40.
\textsuperscript{159} Id. at 37, 42-43. See supra note 75 and accompanying text.
\textsuperscript{160} See Annotation, Products Liability—Jurisdiction, supra note 67, at 42.
\textsuperscript{161} Id. at 36.
\textsuperscript{162} Forum non conveniens permits the dismissal of an action if it is brought in an inconvenient forum and the defendant is served in another forum. See, e.g., Wil-
the state statute for transfer of venue. A transfer of venue motion should be made only as an alternative if the motion to dismiss for lack of personal jurisdiction fails. This is used alternatively because the defendant will subject herself to the court’s jurisdiction by bringing a motion for transfer of venue.

The question that arises in examining the tactical considerations is whether the policies of personal jurisdiction are being served if parties are choosing their forums on the basis of these extraneous factors. It is possible that the vagueness of the numerous standards applied in personal jurisdiction decisions have contributed to the confusion in the practical application of personal jurisdiction.

CONCLUSION

This comment attempts to provide the reader with an up-to-date analysis on the recent developments and practices of personal and general jurisdiction in Minnesota. Personal jurisdiction, and specifically general jurisdiction, are governed by ambiguous standards which lead the court to inconsistent and sometimes unreasonable results. As a result, practitioners’ knowledge and understanding of correct personal and general jurisdiction procedure is as equally uncertain as the standards used. Yet, it is essential to successful trial practice to have a sufficient understanding of these jurisdictional standards, as they are the only ones available to practitioners.

With the law in its present state, the courts will continue to evade the conflict surrounding general jurisdiction in deciding personal jurisdiction issues. While there are a number of theories, one commentator suggests limiting general jurisdiction


163. See, e.g., Richman, Review Essay, Part I—Casad’s Jurisdiction in Civil Actions; Part II—A Sliding Scale to Supplement the Distinction Between General and Specific Jurisdiction, 72 CALIF. L. REV. 1328, 1336—46 (1984) (advocates general and specific categories include a sliding scale which examines both the defendant’s forum contacts and their connection to the plaintiff’s claim); Lewis, A Brave New World For Personal Jurisdiction: Flexible Tests Under Uniform Standards, 87 VAND. L. REV. 1, 5–13 (1984) (suggests general and specific categories be eliminated and replaced by a general analysis of the defendant’s expectations of the suit and the benefits received by the forum state).
to only a defendant’s forum state. This avoids the risk of forcing a defendant to litigate in an inconvenient forum. It also avoids the risk of subjecting a defendant to unfair substantive law. At the same time, the plaintiff is still guaranteed a place to bring her suit.

In order for the Minnesota courts to provide credible and efficient jurisdictional decisions, either the courts or the legislature must clarify and redefine the principles and policies of personal jurisdiction. In Minnesota, the first step in solving the general jurisdiction problem should be made by the legislature. The legislature should amend statute section 543.19 to specifically enumerate the limits of due process. The courts may be waiting for the legislature’s lead before they expressly acknowledge the validity of general jurisdiction. On the other hand, an express acknowledgement of general jurisdiction by the court may also bring the issue to the legislature’s attention. Thus far, the Minnesota courts have merely mentioned the existence of general jurisdiction. An amendment to the statute will provide the courts with direction and allow them to clarify the practical applications of general jurisdiction. If this action is not undertaken, excessive forum shopping and confusion by both litigants and jurists will continue.

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164. Twitchell, supra note 2, at 667.
165. Id. Twitchell asserts that “[i]f the defendant is forced to defend a claim that is not related to its forum activities in a forum other than its home base, the lack of litigational support and the difficulty in procuring witnesses and proof may make it much harder to defend the claim.” Id.
166. Id. at 668.
167. Id. at 669. This theory also increases the probability that plaintiff may sue multiple defendants, while providing defendants with some predictability of what jurisdiction to expect. Id.