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NOTES


The question of personal jurisdiction over a nonresident defendant based on contractual dealings with a resident plaintiff has long divided the federal and state courts.1 Mindful of this confusion, the United States Supreme Court in Burger King Corp. v. Rudzewicz2 defined minimum contacts in establishing jurisdiction and held that a Florida court could exercise jurisdiction over a nonresident purchaser by virtue of his contract with a Florida corporation obligating him to remit payments to Miami. The Supreme Court resolved a number of issues that had previously caused areas of uncertainty in establishing personal jurisdiction in single contract cases by concluding that jurisdiction may not be avoided merely because the defendant did not physically enter the forum,3 and that an individual's contract with an out-of-state party cannot alone automatically allow the forum state to exercise jurisdiction over the defendant.4

This article will trace the historical development of the doctrine of personal jurisdiction and then analyze and critique this Court's rationale and subsequent holding in Burger King. The Burger King holding will then be assessed as to the effect of the decision on future single contract litigation.

I. STATEMENT OF THE CASE

John Rudzewicz and Brian MacShara, citizens and residents of Michigan, decided to pursue a Burger King restau-

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1. Burger King Corp. v. MacShara, 724 F.2d 1505, 1508 (11th Cir. 1984), rev'd sub nom. Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985). Brian MacShara and John Rudzewicz were co-defendants in the initial action. Rudzewicz is the only defendant involved in the case which is the subject of this article, as MacShara did not appeal from the original judgment.
2. 105 S. Ct. 2174 (Stevens, J., joined by White, J., dissenting).
3. Id. at 2184.
4. Id. at 2185.
rant franchise near Detroit, Michigan, in 1978. Rudzewicz, a senior partner in a Michigan accounting firm, was to put up the investment capital while MacShara would serve as the manager.⁵

The Burger King Corporation is incorporated in Florida, with its headquarters in Miami. Burger King also maintains a network of district offices, one of which is located in Birmingham, Michigan. The Miami headquarters sets corporate policy and works directly with the franchisees when major problems arise; the district offices monitor the day-to-day operations of the franchisees.⁶

In the autumn of 1978, Rudzewicz and MacShara jointly applied for a franchise through Burger King’s district office in Birmingham.⁷ The Michigan district manager, H.G. Hoffman, evaluated the application and wrote to Rudzewicz and MacShara on behalf of the company to convey approval of the franchise application. The Michigan office was Burger King’s sole representative in the following months of negotiations with Rudzewicz and MacShara.⁸

During the period of negotiations, Hoffman persuaded Rudzewicz and MacShara to acquire an existing store in Drayton Plains, Michigan, and convinced them to purchase $165,000 worth of restaurant equipment.⁹ Also, during this period, MacShara participated in a mandatory training seminar which was conducted at Burger King University in Miami.¹⁰

On May 29, 1979, before the final agreements were signed, disputes between the franchisees and Burger King arose. Rudzewicz and MacShara dealt with both Hoffman and the Miami office in settling the disputes.¹¹ After the franchise had

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⁵ Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174, 2179 (1985). MacShara’s managerial experience included previous positions as a supervisor at a construction firm and an assistant at a Burger King restaurant. Burger King Corp. v. MacShara, 724 F.2d 1505, 1506. (11th Cir. 1984), rev’d sub nom. Burger King; 105 S. Ct. 2174.
⁶ 105 S. Ct. at 2178-79.
⁷ Id. at 2179.
⁸ 724 F.2d at 1507.
⁹ Id.
¹⁰ 105 S. Ct. at 2179.
¹¹ Id. The parties disagreed over site-development fees, building design, monthly rent and assignment of liabilities. Id. The rent Burger King expected the franchise to pay was in excess of Rudzewicz’ projections. Rudzewicz demanded a lower figure from
obtained limited concessions from the Miami office, Rudzewicz and MacShara signed the lease and franchise agreements. Rudzewicz had obligated himself personally to payments in excess of one million dollars over a twenty-year period. All rent, royalties, tax refunds and other fees were to be remitted to the Miami headquarters; in return, Burger King promised use of its trademark and marketing services. The Michigan office was responsible for all supervision, advertising and consultation due under the contract.

The franchise commenced business in June 1979, and enjoyed a steady business during the summer; however, patronage declined later in the year after a recession in Michigan began. Rudzewicz fell behind in monthly payments and the Miami headquarters sent notice of default. After payment rescheduling negotiations among the franchisees, the district office, and headquarters failed, Burger King terminated the agreement and ordered the franchisees to vacate the premises.

Rudzewicz and MacShara refused to vacate, and Burger King subsequently commenced action in the United States District Court for the Southern District of Florida in May, 1981, for breach of contract and trademark infringement. The defendants entered special appearances, arguing that the district court lacked personal jurisdiction over them. After losing on the motion, they filed a counterclaim seeking

Hoffman, but Hoffman replied that the rent computation was out of his hands. 724 F.2d at 1507.

12. 724 F.2d at 1507. Rudzewicz and MacShara signed in their individual capacities at a Michigan closing ceremony attended by employees of the district office. Id.

13. 105 S. Ct. at 2179.

14. Id. at 2178. The franchise agreement contained a “choice-of-law” provision which stated:

This Agreement shall become valid when executed and accepted by BKC at Miami, Florida; it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. The choice of law designation does not require that all suits concerning this Agreement be filed in Florida.

Id. at 2187.

15. 724 F.2d at 1507.

16. 105 S. Ct. at 2179-80.

17. Id. at 2180. The defendants argued that Burger King's claim did not arise within the Southern District of Florida; therefore, the district court lacked personal jurisdiction over them. Id.
damages.\textsuperscript{18} Judgment was entered for Burger King.\textsuperscript{19} Rudzewicz then appealed to the Court of Appeals for the Eleventh Circuit,\textsuperscript{20} where judgment was reversed on the grounds that the district court could not properly exercise personal jurisdiction over Rudzewicz pursuant to Florida's contract long-arm statute.\textsuperscript{21} Burger King appealed the Eleventh Circuit's judgment to the Supreme Court of the United States.\textsuperscript{22} The Supreme Court granted certiorari and reversed.\textsuperscript{23}

\section*{II. DEVELOPMENTS IN JURISDICTIONAL DOCTRINE}

In order to properly undertake civil adjudication, a court must have jurisdiction over both the subject matter\textsuperscript{24} of the dispute and the parties involved. When the target of the action is a person, the action is classified as "in personam."\textsuperscript{25} In

\begin{itemize}
\item \textsuperscript{18} Id. Rudzewicz and MacShara sought damages for alleged violations by Burger King of Michigan's Franchise Investment Law, MICH. COMP. LAWS § 445.1501 et seq. (1979).
\item \textsuperscript{19} 105 S. Ct. at 2180. Burger King was awarded $228,875.40 in contract damages, as well as costs of $2,151.06 and $30,000 in attorney fees. 724 F.2d at 1508.
\item \textsuperscript{20} MacShara did not appeal the judgment. 724 F.2d 1505.
\item \textsuperscript{21} 105 S. Ct. at 2180. Under FLA. STAT. § 48.193(1)(g) (Supp. 1984) jurisdiction extends to:
\begin{itemize}
\item (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
\begin{itemize}
\item (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
\end{itemize}
\item \textsuperscript{22} 105 S. Ct. at 2181. Burger King appealed the judgment pursuant to 28 U.S.C. § 1254(2) (1984). \textit{Id.}
\item \textsuperscript{23} \textit{Id.} at 2181. It was unclear whether the Eleventh Circuit held that FLA. STAT. § 48.193(1)(g) (Supp. 1984) was unconstitutional. Therefore, the Supreme Court held that there was no jurisdiction by appeal and dismissed that issue. The Court treated the jurisdictional statement as a petition for writ of certiorari under 28 U.S.C. § 2103 (1984). \textit{Id.}
\item \textsuperscript{24} Subject matter jurisdiction was not in dispute in Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985). Subject matter jurisdiction is the authority of the court to adjudicate the type of controversy before the court. \textit{See} K. CLERMONT, CIVIL PROCEDURE 10-17 (1982).
\item \textsuperscript{25} The target of the action can be a person or thing. When the interest is a thing, the action may be classified as in rem or quasi in rem. K. CLERMONT, \textit{supra} note 24. The target of the action in \textit{Burger King} was a person, and thus the action is classified as in personam. However, the trend is toward eliminating strict categorization of in per-
this type of action, the due process clause requires that the court have power over the individual defendant, and that the exercise of this power be reasonable.

A. Traditional Bases of Jurisdiction: Physical Presence

The territorial approach to jurisdiction was adopted in 1877 by the United States Supreme Court in Pennoyer v. Neff, where it held that a court lacked personal jurisdiction over a defendant who was not personally served while physically present within the forum state. The Court concluded that each state could exert power over the persons and property within its borders, but was powerless over all persons and property outside of its borders. Thus, the “power principle” was born.

The power principle, when mechanically applied, proved useless in civil controversies involving multistate elements. A number of exceptions were created to add flexibility to the rule of physical presence. These exceptions included the “consent” of the defendant to jurisdiction, and the defendant’s “domicile.”


26. “[N]or shall any state deprive any person of life, liberty, or property without due process of law . . . .” U.S. Const. amend. XIV, § 1.


28. 95 U.S. 714 (1877). Neff brought an ejectment action to remove Pennoyer from land located in Oregon. Pennoyer had bought the land at a sheriff’s execution sale; the land had been sold to enforce a default judgment against Neff. Notice of the commencement of the action against Neff had been published in an Oregon newspaper. However, Neff was never personally served while present in the state of Oregon. When Neff failed to appear for trial, a default judgment was entered against him. Id. at 719-20. For an analysis of early jurisdictional requirements, see Kurkland, The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts from Pennoyer to Denckla: A Review, 25 U. Chi. L. Rev. 569 (1958).

29. Pennoyer, 95 U.S. at 734.

30. Id. at 722.

31. The biggest exception was that of consent of a defendant, not physically present in the state, to the jurisdiction of the court. Id. at 724. This consent could also be implied; therefore, a corporation “doing business” within a state “consented” to jurisdiction there. St. Clair v. Cox, 106 U.S. 350, 356 (1882). The exception was later applied to nonresident tortfeasors. Hess v. Pawloski, 274 U.S. 352, 356 (1927). Another exception was that of an individual's domicile. A judgment based on domicile, coupled
B. Minimum Contacts and the Reasonableness Test

In *International Shoe Co. v. Washington*, the United States Supreme Court expanded the notion of "power" by dispensing with the territorial theory of jurisdiction. Physical presence was no longer the rule as the Court adopted a new standard of "minimum contacts," and created the "reasonableness test." Under the new test, a defendant must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " It is this test which provided the basis for modern long-arm in personam jurisdiction.

with personal service outside the jurisdiction, would be valid. Blackmer v. United States, 284 U.S. 421, 442 (1932).

32. 326 U.S. 310 (1945). This case involved an action by the State of Washington against a Delaware corporation to collect unpaid contributions to Washington's unemployment compensation fund. *Id.* at 311. The corporation had no offices in Washington, but sent salesmen to the state to solicit orders. *Id.* at 313. These orders were filled in Missouri, and the goods were then shipped from Missouri to Washington. *Id.* at 314.

33. *Id.* at 316. Minimum contacts did not affect the defendant's ability to consent to suit in a particular forum. This consent may be expressed or implied through a variety of legal arrangements. Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites, 456 U.S. 694, 703 (1982). See also National Equip. Rental, Ltd. v. Szukhent, 377 U.S. 311 (1964) (parties to a contract may agree in advance to submit to the jurisdiction of a particular court); The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972) (use of forum-selection arrangements is not violate of due process where the provisions are not unreasonable and unjust).

34. *International Shoe*, 326 U.S. at 316 (quoting Miliken v. Meyer, 311 U.S. 457, 463 (1940)). "When a controversy is related to or 'arises out of' a defendant's contacts with the forum, a 'relationship among the defendant, the forum, and the litigation' is the essential foundation of in personam jurisdiction." *Helicopteros Nacionales de Colombia*, S.A. v. Hall, 466 U.S. 408, 414 (1984) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). Where a state exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the state, the court is exercising "specific jurisdiction" over the defendant; a court exercises "general jurisdiction" over a defendant in a suit not arising out of or related to the defendant's contacts with the forum. *Helicopteros*, 466 U.S. at 414 nn.8-9. See Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952). See also von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1144-64 (1966) (the state is exercising specific jurisdiction over the defendant when the suit arises out of defendant's contacts with the forum). Where the cause of action does not arise out of or relate to the defendant's activities in the forum state, in personam jurisdiction may still be exercised if there are sufficient contacts between the forum and the defendant. *Helicopteros*, 466 U.S. at 414.

The Supreme Court further expanded jurisdiction in *McGee v. International Life Insurance Co.* where it defined minimum contacts in terms of *quality* rather than *quantity*. A single act was held to support jurisdiction so long as it created a "substantial connection" with the forum. However, in *Hanson v. Denckla*, the Supreme Court held that this defendant-forum contact must result from the nonresident's "purposefully availing" conduct and not the "unilateral activity" of a third party. Thus, a contact was determined to be sufficient within the purview of *International Shoe* when the defendant "purposefully derived benefit" from the activities within a state, "deliberately" engaged in significant activities within a state, "intentionally" targeted a plaintiff in a forum state, or created "continuing obligations" between himself and residents of the forum. Mere foreseeability of harm occurring within the forum state was not sufficient to establish the forum state's jurisdiction. The defendant's conduct must be such that he should "reasonably anticipate being haled" into the forum.

Once the defendant has purposefully established the requisite contacts with the forum state, these contacts must be analyzed to determine whether exercise of jurisdiction in the

36. 355 U.S. 220 (1957). The Supreme Court upheld jurisdiction by a California court over a Texas insurance company whose only contact with California was one insurance contract. *Id.* at 224.

37. *Id.* at 223. California had enacted special legislation to deal specifically with jurisdiction over nonresident insurance companies. *Id.* at 221. The Court concluded that such enabling legislation expressed a strong state interest in regulating these companies, and thus the defendant's single contract with California was a qualitatively high contact. *Id.* at 223.

38. 357 U.S. 235 (1958). In *Hanson*, a Pennsylvania settlor created an inter vivos trust in Delaware, naming a Delaware company trustee. *Id.* at 238. The settlor later moved to Florida, where she executed her power of appointment and received income from the trust. *Id.* at 239. Plaintiffs petitioned the Florida court for a declaratory judgment in which the trust company was named as a defendant. *Id.* at 240-41. The court held that the trust company did not have sufficient affiliation with Florida to allow the Florida courts to exercise personal jurisdiction over it. *Id.* at 253.

39. *Id.*


45. *Id.* at 297.
specific case would be reasonable. 46 Other factors to be considered are the burden on the defendant, the forum state’s interest in adjudicating the dispute, the interstate judicial system’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental social policies. 47

C. Jurisdiction in Contract Litigation: The Contract Contact

One type of contract case which has caused great confusion among the courts in the exercise of in personam jurisdiction is a suit for breach of a contract between the residents of different states. 48 The Seventh Circuit Court of Appeals’ decisions in two recent cases illustrate the court’s uncertainty in applying Wisconsin’s contract long-arm statute. 49

In Lakeside Bridge & Steel Co. v. Mountain State Construction Co., 50 the court of appeals held that where the principal contact relied upon as a basis for jurisdiction is performance of contractual obligations in the forum by the

47. Burger King, 105 S. Ct. at 2184.
49. Under Wis. STAT. § 801.05(5)(a) (1984) jurisdiction is extended in cases for:
   (5) Local services, goods or contracts. In any action which:
   (a) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff’s benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff.

Id.

In applying any statute, the court must decide whether the specific case fits the statute facially and whether the statute as applied would violate due process. See Wuchter v. Pizzutti, 276 U.S. 13 (1928); In re Liquidation of All-Star Ins., 116 Wis. 2d 72, 327 N.W.2d 648 (1983), appeal dismissed, 461 U.S. 951 (1983).
50. 597 F.2d 596 (7th Cir. 1979), cert. denied, 445 U.S. 907 (1980). Lakeside, a Wisconsin corporation, brought suit against Mountain State, a Virginia corporation, for breach of contract. Lakeside manufactured materials in Wisconsin to ship to Virginia, but Mountain State refused to pay. Id. at 598. The contract was the only contact between Wisconsin and Virginia; all negotiations had been conducted by telephone and mail. Id. at 597-98. The Seventh Circuit relied heavily on the “purposefully availing” language of Hanson and concluded that Mountain State had not availed itself of the benefits and protections of Wisconsin since it had not required the goods to be manufactured there. Id. at 603.
plaintiff, and not the defendant, this contact is insufficient to confer jurisdiction over an out-of-state defendant.\textsuperscript{51} Other factors must be scrutinized in order to determine whether the defendant "purposefully availed" itself of the benefits of the forum.\textsuperscript{52} The court concluded that the defendant's use of interstate telephone and mail service to communicate with the plaintiff would not establish the minimum contacts.\textsuperscript{53}

Although the facts in Wisconsin Electrical Manufacturing Co. v. Pennant Products, Inc.,\textsuperscript{54} were similar to those in Lakeside, the court of appeals found jurisdiction on the basis of two visits by agents of the defendant to the forum.\textsuperscript{55} The court concluded that these acts were significant to the formation of the contract and in establishing a business relationship.\textsuperscript{56} Thus, the defendant "purposefully availed" itself of the benefits of the forum.\textsuperscript{57}

III. THE BURGER KING OPINIONS

A. The Majority

In its majority opinion, the Supreme Court adopted the Lakeside position that an individual's contract alone will not constitute a "contact" for purposes of due process.\textsuperscript{58} In determining whether the defendant purposefully established minimum contacts, the Court provided guidelines by analyzing "prior negotiations and contemplated future consequences, along with the parties' actual course of dealings and the terms of the contract."\textsuperscript{59} Physical contact with the forum was not

\textsuperscript{51} Id. at 601.

\textsuperscript{52} Id. at 602. This theory of analyzing a defendant's contacts in contract cases is referred to as "contract plus" jurisdictional analysis. See Note, supra note 35, at 387. The place where the contract was entered or breached is irrelevant under Wis. Stat. § 801.05(5)(a) (1984), but is relevant in some jurisdictions. See, e.g., McKee Elec. Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, 229 N.E.2d 604, 283 N.Y.S.2d 34 (1967).

\textsuperscript{53} Lakeside, 597 F.2d at 604. The court held that this would "give jurisdiction to any state into which communications were directed." Id.

\textsuperscript{54} 619 F.2d 676 (7th Cir. 1980).

\textsuperscript{55} Id. at 677.

\textsuperscript{56} Id. at 677-78.

\textsuperscript{57} Id.

\textsuperscript{58} Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174, 2185 (1985).

\textsuperscript{59} Id. at 2186.
The Court considered a contract "but an intermediate step serving to tie-up prior business negotiations with future consequences which themselves are the real object of the business transactions.'" \(^{61}\)

The Court found that Rudzewicz "deliberately 'reach[ed] out beyond' Michigan and negotiated with a Florida corporation for the purchase of a Burger King franchise and its accompanying benefits.\(^{62}\) Rudzewicz' subsequent refusal to make the required payments for these benefits caused "foreseeable injuries to the corporation in Florida."\(^{63}\)

After analyzing the parties' course of dealing, the Court found that Rudzewicz "most certainly knew that he was affiliating himself with an enterprise based primarily in Florida."\(^{64}\) Therefore, he had reason to anticipate a suit outside of Michigan. The Court concluded that the course of dealing repeatedly confirmed that decisionmaking authority was vested in the Miami headquarters, and that the district office was a "powerless link" between the headquarters and the franchisees.\(^{65}\) The Court also concluded that there was no disparity of bargaining power involved in the parties' dealings and resulting agreement.\(^{66}\) In analyzing the terms of the contract, the Court noted the inclusion of a Florida choice-of-law provision. While the choice-of-law provision alone would not be

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\(^{60}\) Id. at 2184. The Seventh Circuit had dispelled with the "footfall theory" in Wisconsin Elec. Mfg. Co. v. Pennant Prods., Inc., 619 F.2d 676 (7th Cir 1980): "We are not holding that the 'law's requirement is satisfied by a foot-fall on the state's soil.'" Id. at 678 n.8 (quoting Erlanger Mills v. Cohoes Fibre Mills, 239 F.2d 502, 509 (4th Cir. 1956)).

\(^{61}\) 105 S. Ct. at 2185 (quoting Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316 (1943)).

\(^{62}\) 105 S. Ct. at 2186 (quoting Travelers Health Ass'n v. Virginia, 339 U.S. 643, 647 (1950)).

\(^{63}\) 105 S. Ct. at 2186.

\(^{64}\) Id.

\(^{65}\) Id. at 2186-87. It is not clear whether the district office was in actuality a "powerless link." Compare Burger King Corp. v. MacShara, 724 F.2d 1505, 1511 (11th Cir. 1984), rev'd sub nom. Burger King, 105 S. Ct. 2174 ("[T]he office in Rudzewicz' home state conducted all of the negotiations and wholly supervised the contract . . .") with 105 S. Ct. at 2179 n.7 (Rudzewicz and MacShara "learned that the district office had 'very little' decisionmaking authority . . .").

\(^{66}\) 105 S. Ct. at 2188.
sufficient to confer jurisdiction, the Court found that it provided Rudzewicz with notice of possible litigation in Florida.  

B. The Dissent

Justice Stevens, writing for the dissent, concluded that it was unfair to require Rudzewicz to defend the law suit in Florida. Rudzewicz did not do business in Florida, and the food he prepared in Michigan never passed into the State of Florida. Justice Stevens stated that the principal contacts throughout the business relationship were with the Michigan district office.  

Justice Stevens criticized the majority's emphasis on the terms of the contract. He stated that the boilerplate language contained in such documents was not enough to establish that the defendant purposefully availed himself of Florida law.  

IV. Critique

*Burger King* was a valiant attempt by the United States Supreme Court to finally resolve the question of personal jurisdiction in single contract cases. The Court started out on the right track by developing necessary guidelines for establishing the defendant's contacts with the forum state. The Court went astray, however, when it mechanically applied these guidelines to the facts of the case. The result was an exercise of jurisdiction over the defendant that failed to meet the fairness and reasonableness requirements of *International Shoe*.  

The Supreme Court found that Rudzewicz had "deliberately reached out beyond Michigan and negotiated with a Florida corporation." Yet Rudzewicz and MacShara ap-

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67. *Id.* at 2187. The Court found that Rudzewicz established substantial and continuing contacts with Florida such that Florida had "power" over him by virtue of its long-arm statute. The exercise of this power was reasonable so as not to violate due process. *Id.* at 2190. The Court held that Florida had an interest in resolving the dispute, and found no evidence that it was unreasonable to require Rudzewicz to defend in Florida. *Id.* at 2188.

68. *Id.* at 2190 (Stevens, J., joined by White, J., dissenting).

69. *Id.*


plied for a franchise through the Michigan district office. During the course of negotiations the district office was Burger King's sole representative. As sole representative, it directed the franchisees as to what building and equipment to purchase.\textsuperscript{72} There was no evidence to indicate that Rudzewicz ever had contact with anyone in Miami during the period of negotiations;\textsuperscript{73} thus, the Eleventh Circuit concluded that "[t]o Rudzewicz, the Michigan office was for all intents and purposes the embodiment of Burger King. He had reason to believe that his working relationship with Burger King began and ended in Michigan, not at the distant and anonymous Florida headquarters."\textsuperscript{74}

The Supreme Court in \textit{United States v. Rumley}\textsuperscript{75} stated that courts must not be blind to what "[a]ll others can see and understand."\textsuperscript{76} Yet the majority in \textit{Burger King} reached a final decision that failed to take into consideration what Rudzewicz and the court of appeals saw and understood. Ironically, the Supreme Court in \textit{Burger King} also cited its earlier decision in \textit{Rumley}, but failed to acknowledge this substantive distinction.\textsuperscript{77}

The Supreme Court also hastily brushed over the issue of whether disparity existed between the parties during the course of dealing and the resulting franchise agreement by stating that Rudzewicz and MacShara "were and are experienced and sophisticated businessmen" who at no time had acted "under economic duress or disadvantage imposed by Burger King."\textsuperscript{78} However, the court of appeals discerned that there was a "characteristic disparity of bargaining power in the facts of the case."\textsuperscript{79} Rudzewicz was not at liberty to negotiate the terms of the contract; the contract was a standard form with non-negotiable terms.\textsuperscript{80}

\begin{itemize}
\item \textsuperscript{72} Burger King Corp. v. MacShara, 724 F.2d 1505, 1507 (11th Cir. 1984), \textit{rev'd sub nom. Burger King}, 105 S. Ct. 2174.
\item \textsuperscript{73} Id. at 1511.
\item \textsuperscript{74} Id.
\item \textsuperscript{75} 345 U.S. 41 (1943).
\item \textsuperscript{76} Id. at 44 (quoting \textit{The Child Labor Tax Case}, 259 U.S. 20, 37 (1922)).
\item \textsuperscript{77} 105 S. Ct. at 2190.
\item \textsuperscript{78} Id. at 2188-89.
\item \textsuperscript{79} 724 F.2d at 1512.
\item \textsuperscript{80} Id.
\end{itemize}
Thus, Rudzewicz was essentially in a take-it-or-leave-it situation: he either had to accept the boilerplate terms of the contract or forego the franchise. While this may not necessarily constitute "economic duress," it illustrates the superior bargaining position of the corporation. Rudzewicz' accounting experience and MacShara's "stint" as a one-time Burger King employee hardly qualify them as "sophisticated businessmen." By ignoring the obvious disparity between Rudzewicz and Burger King, the Supreme Court is setting a dangerous precedent which the court of appeals notes, "could ultimately sow the seeds of default judgments against franchisees owing smaller debts."82

The Supreme Court relied heavily on the choice-of-law clause within the franchise agreement in establishing jurisdiction, despite its disclaimer that "such a provision standing alone would be insufficient to confer jurisdiction."83 The Court reasoned that this clause, coupled with a twenty-year contractual relationship between Rudzewicz and Burger King, was sufficient to give notice to Rudzewicz of the possibility of litigation in Florida. Moreover, by entering into a contract containing a choice-of-law provision, Rudzewicz had "purposefully availed himself to the benefits and protections of Florida's laws."84

The Supreme Court's emphasis on choice-of-law provisions is disturbing and raises new questions: If a choice-of-law clause alone is not sufficient to establish jurisdiction, what else is necessary? Of what significance is the duration of the contract in satisfying sufficiency? The court of appeals avoided the choice-of-law issue entirely by concluding that it was irrelevant to the question of personal jurisdiction.85

81. Id. at 1507.
82. Id. at 1511.
83. 105 S. Ct. at 2187.
84. Id.
85. 724 F.2d at 1511-12 n.10. The Eleventh Circuit relied on Hanson v. Denckla, 357 U.S. 235 (1958) for the proposition that "the center of gravity for choice-of-law purposes does not necessarily confer the sovereign prerogative to assert jurisdiction." 724 F.2d at 1511-12 n.10 (quoting Hanson, 357 U.S. at 254). The Court in Hanson and in subsequent cases held that choice-of-law analysis was distinct from minimum-contact jurisdictional analysis. See 105 S. Ct. at 2187. Choice-of-law analysis focuses on all the elements of a transaction, whereas minimum-contacts analysis focuses on the defendant's conduct with the forum. The Court in Burger King concluded that there were no
Justice Stevens stated in the dissent that he found the opinion of the Eleventh Circuit more persuasive than that of the majority. He criticized the majority's reliance on the terms of the contract in establishing jurisdiction, concluding that “such superficial analysis creates a potential for unfairness not only in negotiations between franchisors and their franchisees but, more significantly, in the resolution of the disputes that inevitably arise from time to time in such relationships.”

The Eleventh Circuit aptly summarized the issue of unfairness when it stated:

In sum, we hold that the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida. Jurisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process.

V. CONCLUSION

Burger King v. Rudzewicz is no doubt a landmark decision in the area of contract litigation. The Supreme Court tied together the various theories on jurisdiction and established comprehensive guidelines for determining in personam jurisdiction in single contract cases. The Court also resolved the issues of physical contacts and sufficiency of single contract contacts that had left the courts in a state of confusion.

Burger King, however, raises a number of new uncertainties that will plague the courts as they grapple with determining just how much deference to accord contract provisions. While Burger King proposes to offer a solution to jurisdiction in single contract cases, this solution may prove to be no more than a trap for the inexperienced and unwary.

CHRISTIE A. LINSKENS

cases indicating that a choice-of-law provision could not be considered in minimum-contact analysis. *Id.*

86. 105 S. Ct. at 2190.

87. *Id.* Although *Burger King* dealt with a franchise agreement, the opinion is not meant to be limited to this specific area of contracts.

88. 724 F.2d at 1513.