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THE IMPACT OF *ALLSTATE INSURANCE CO. v. HAGUE* ON CONSTITUTIONAL LIMITATIONS ON CHOICE OF LAW

*W. Clark Williams, Jr.**

I. INTRODUCTION

The development of constitutional limitations on choice of law by the United States Supreme Court has turned primarily on the due process clause[1] and the full faith and credit clause[2] of the United States Constitution.[3] In theory at least, each constitutional provision rests upon separate grounds. The full faith and credit clause, as it applies to public acts, would compel a forum state under appropriate circumstances to honor the sovereignty of a foreign state in the federal system and to apply the law of the foreign state whose interests are sufficiently compelling.[4] The due process

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1. U.S. CONST. amend. XIV, § 1: "No State shall . . . deprive any person of life, liberty, or property, without the due process of law . . . ."

2. U.S. CONST. art. IV, § 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

3. To a limited extent, the privileges and immunities and equal protection clauses have also placed constitutional limitations on a forum court's choice of law decisions. The privileges and immunities clause, U.S. CONST. art. IV, § 2, provides, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." *See also* U.S. CONST. amend. XIV, § 1, which provides, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The equal protection clause, U.S. CONST. amend. XIV, § 1, provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

In the choice of law context, these clauses have been construed as prohibiting a forum court from applying forum law in a manner which discriminates against a party because of nonresidence, with no rational basis. For an excellent treatment of these clauses in choice of law cases, see Currie & Schreter, *Unconstitutional Discrimination in the Conflict of Laws: Equal Protection*, 28 U. CHI. L. REV. 1 (1960) and Currie & Schreter, *Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities*, 69 YALE L.J. 1323 (1960). *See also* Note, *Unconstitutional Discrimination in Choice of Law*, 77 COLUM. L. REV. 272 (1977). This article will not explore these limitations.

4. *See* Kirgis, *The Roles of Due Process and Full Faith and Credit in Choice of Law*, 62

clause limits the power of a state to give extraterritorial effect to its own laws in a manner which is unfair or unreasonable, given the relationship between that state, the parties, and the transaction being sued upon.[5]

Unfortunately, the development of these two doctrines and their impact on constitutional restrictions on choice of law over the last fifty years has been at times both inconsistent and confusing. If read broadly enough, either of the two clauses could deal functionally with most choice of law limitations issues.[6] But since the 1930's, the Supreme Court has chosen to develop the scope of both clauses in this area in parallel lines of cases, not always with clarity as to the reason for choosing to rest a particular decision on one clause instead of the other.[7] During this process, the Court has struggled to arrive at an acceptable standard which is unambiguous in its meaning and application.

This article will trace the development of the limitations on choice of law imposed by the Court through the due process clause[8] and the full faith and credit clause.[9] As will be seen, the Court during this period made tentative movements toward developing a doctrine which would have been tantamount to a uniform federal choice of law rule under the auspices of full faith and credit[10] before finally retreating to a less restrictive standard. The gradual erosion of distinctions between the two doctrines' applications has now reached a point at which the differences are insignificant for most purposes.[11] The Court's most recent decision in this

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CORNELL L. REV. 94, 110 (1976); Martin, *Constitutional Limitations on Choice of Law*, 61 CORNELL L. REV. 185, 192 (1976); *see also* Jackson, *Full Faith and Credit — The Lawyer's Clause of the Constitution*, 45 COLUM. L. REV. 1, 9 (1945).

5. *See* Kirgis, *supra* note 4, at 95; Martin, *supra* note 4, at 190.

6. *See* E. SCOLES & P. HAY, CONFLICT OF LAWS 80 (1982); *see also* Weintraub, *Due Process and Full Faith and Credit Limitations on a State's Choice of Law*, 44 IOWA L. REV. 449, 476 (1959).

7. Part of the reason for this confusion seems to be a reluctance by the Supreme Court to identify clearly the different focuses of the two clauses in the choice of law area. *See* Allstate Ins. Co. v. Hague, 449 U.S. 302, 321 nn.4-6 (1981) (Stevens, J., concurring); *see also* R. LEFLAR, AMERICAN CONFLICTS LAW §§ 5, 55 (3d ed. 1977).

8. *See infra* text accompanying notes 46-81.

9. *See infra* text accompanying notes 15-45.

10. R. LEFLAR, *supra* note 7, at § 55.

11. *See* Allstate Ins. Co. v. Hague, 449 U.S. at 308 n.10; *see also* Martin, *supra* note 4, at 186: "When the question is limited to choice of law in cases not yet reduced to judgment . . . the only apparent significant distinction between the two clauses is that due process may require adherence to the law of another country, whereas full faith and credit is limited to interstate applications."

field, *Allstate Insurance Co. v. Hague*,[12] unfortunately, creates problems in assessing the true status of the standards which have developed, both because of the absence of a clear majority position[13] and because of the troublesome application of the standard by the justices comprising the plurality view.[14]

II. Historical Development

A. *Full Faith and Credit*

Most of the significant Supreme Court decisions regarding full faith and credit to public acts have arisen in the context of workmen's compensation cases. Although the Court had previously discussed due process limitations on choice of law,[15] *Bradford Electric Co. v. Clapper*,[16] decided in 1932, represented one of the earliest treatments of the full faith and credit issue. A Vermont resident had been hired by a Vermont utility company to do maintenance work, and while on temporary assignment in New Hampshire, he was killed. His administratrix brought a negligence action against the employer in New Hampshire state court. However, the Vermont workmen's compensation statute provided that the exclusive remedy for injured workers was provided under the statute, while New Hampshire law provided the employee with an election to sue the employer for negligence. The United States Supreme Court held that the New Hampshire courts were required to give full faith and credit to the Vermont statute and that the negligence action was barred by the terms of that "public act."[17] Dismissing the significance of the fact that the employee was killed in New Hampshire and any interest this arguably might give New Hampshire in applying its own statute, the Court reasoned that the forum court could refuse to honor a foreign cause of action only if it were obnoxious to the public policy of the forum state.[18] The Court

12. 449 U.S. 302 (1981).

13. *See infra* note 87.

14. *See infra* text accompanying notes 107-26.

15. *See* Home Ins. Co. v. Dick, 281 U.S. 397 (1930); *see also infra* text accompanying notes 46-55.

16. 286 U.S. 145 (1932).

17. *Id.* at 162.

18. Thus, a plaintiff suing in New Hampshire on a statutory cause of action arising in Vermont might be denied relief because the forum fails to provide a court with jurisdiction of the controversy . . . or because the enforcement of the right conferred would be obnoxious to the public policy of the forum . . . . But the mere fact that the Vermont legislation does not conform to that of New Hampshire does not estab-

found that New Hampshire's interest as the place of injury was only "casual,"[19] while Vermont, as the residence of both parties and the seat of the employment relation, had a greater connection with the cause of action. However, no analysis of policies was made, and no weighing of interests occurred; rather, the Court gave rigid application to the mandate of full faith and credit and the compulsion upon New Hampshire to honor Vermont's statute.

The Supreme Court decided *Alaska Packers Ass'n v. Industrial Accident Commission*[20] three years later, again facing the issues of full faith and credit entitlement by a foreign statute. This case presented the Court with a conflict between two workmen's compensation statutes, each of which provided that it would be the exclusive remedy for an injured employee.[21] A nonresident alien entered into an employment contract in California with a California employer to work for the company in Alaska and agreed to be bound by Alaska's Workmen's Compensation Act. After being injured in Alaska, the employee returned to California and there filed a claim against his employer with the California Industrial Accident Commission. The employer sued to set aside the award to the employee on the ground that the Alaska act provided his exclusive remedy and must be afforded full faith and credit by the California court. The Supreme Court affirmed the refusal of the California Supreme Court to honor the Alaska statute as a defense to the employee's award.[22]

The Supreme Court initially noted that a forum state need not always give full faith and credit to a sister state's law, inasmuch as this practice would lead to the "absurd result"[23] that in every conflict of laws case, the forum state's law would be applied only in the foreign state. The majority, speaking through Justice Stone, then set forth the proposition that full faith and credit requires an appraisal of the "governmental interests of each jurisdiction,"[24] and compels application of a foreign state's law only when the in-

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lish that it would be obnoxious to the latter's public policy to give effect to the Vermont statute . . . .

Id. at 160-62. *Cf.* Weintraub, *supra* note 6, at 469.

19. *Clapper*, 286 U.S. at 162.

20. 294 U.S. 532 (1935).

21. *Id.* at 544-45.

22. *Id.* at 547.

23. *Id.*

24. *Id. See* Kirgis, *supra* note 4, at 113.

terests of that state outweigh those of the forum.[25]

The majority did invoke the "obnoxiousness test" of *Clapper*,[26] viewing the California Supreme Court's holding as evidence that the Alaska act was obnoxious to California policy.[27] But it is significant that the Court in *Alaska Packers* focused on a different theme in articulating a standard for full faith and credit to public acts. Far from indulging a presumption that full faith and credit must be accorded a foreign statute absent a showing of obnoxiousness, the Court indicated that a forum law which is constitutional is "prima facie" applicable in a choice of law case.[28] And the Court seemed to reserve for itself the ultimate duty of weighing the interests of the affected states and deciding whether the balance dictated full faith and credit entitlement by the foreign state's statute.

It has been argued that the Court after *Alaska Packers* had positioned itself on the verge of developing a uniform, federal rule for making choice of law decisions — at least in domestic conflicts cases — under the auspices of the full faith and credit clause.[29] From the standard articulated in *Alaska Packers*, it was not a large step to holding that the one state whose interests in having its law applied were superior to a "competing state's" interests was constitutionally entitled to have its law chosen for application.[30] But there were problems with this approach. Among them were the difficulties in identifying and assigning proper weight to the various interests of each state concerning an issue, particularly when the legislature and courts of the state had previously been silent with respect to those interests and policies regarding their

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25. *Alaska Packers*, 294 U.S. at 547-48. Justice Stone noted in the majority opinion that, since every state is prima facie entitled to enforce its own laws, the party seeking to challenge such application bears the burden of showing "that of the conflicting interests involved those of the foreign state are superior to those of the forum." *Id.* at 548.

26. *See supra* note 18 and accompanying text.

27. It has been suggested that Justice Stone reformulated the "obnoxiousness test" introduced in *Clapper* in the course of developing a weighing test in *Alaska Packers*. *See* R. WEINTRAUB, COMMENTARY ON CONFLICT OF LAWS 520 (2d ed. 1980).

28. *Alaska Packers*, 294 U.S. at 547.

29. *See* R. LEFLAR, *supra* note 7, § 56; *see also* D. CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS 204-38 (1963).

30. One feature of the standard for full faith and credit as it emerged from *Alaska Packers* was a test phrased in negative, rather than affirmative, terms: A forum court need *not* extend full faith and credit to a foreign state's law unless that foreign state was shown to have a superior interest. This "negative posture" of the standard for full faith and credit has remained intact in Supreme Court decisions since *Alaska Packers*. *See* Allstate Ins. Co., v. Hague, 449 U.S. 302 (1981); *cf.* Kirgis, *supra* note 4, at 120.

own laws.[31] Moreover, the administrative burden on the Supreme Court in providing guidance to state and lower federal courts in a relatively unexplored field of law, may well have been a daunting prospect.

Whatever the incentive, full faith and credit to public acts took still another perceptible change in direction four years later in *Pacific Employers Insurance Co. v. Industrial Accident Commission.*[32] This case again saw the California Industrial Accident Commission awarding recovery under a California statute despite the statute's conflict with a Massachusetts workmen's compensation statute purporting to provide the employee's exclusive remedy. While the injury occurred on a job in California, however, this time both the employer and employee were residents of Massachusetts.

The Supreme Court ruled that California need not give full faith and credit to the Massachusetts statute, and upheld the California court's application of its own workmen's compensation statute. It did so in a fact situation notably close to the converse of that in *Alaska Packers*, and the precise rationale of the opinion in *Pacific Employers* was far from clear.[33] The Court noted that California had the absolute right to legislate its policy regarding workmen's compensation and the availability of benefits to those injured in California, and it mentioned that it would be "obnoxious" to that policy to require denial of compensation to employees injured locally.[34] The Court went on to identify the conflicting interests of the two states — California's in providing compensation for em-

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31. Of course, this problem is not unique to the constitutional limitations on choice of law. It is indeed a troublesome aspect of the interest analysis approach to choice of law decisions presently adopted in varying forms by most states. *See* E. SCOLES & P. HAY, *supra* note 6, at 39; *see also* Currie, *The Constitution and Choice of Law,* 26 U. CHI. L. REV. 9, 77 (1958); Jackson, *supra* note 4, at 16; *cf.* Fisher v. Huck, 50 Or. App. 635, 624 P.2d 177 (1981).

32. 306 U.S. 493 (1939).

33. Justice Stone stated in the majority opinion:

> While the purpose of [the full faith and credit clause] . . . was to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in other states, the very nature of the federal union of states . . . precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes . . . .

Id. at 501.

34. Note the marked similarity of the factual setting in *Pacific Employers* to that in *Clapper*, see *supra* text accompanying notes 16-19, and the similarity of the Massachusetts exclusive remedy statute to that of Vermont in the *Clapper* decision. However, a contrary finding of "obnoxiousness" was made in the *Pacific Employers* decision.

ployees injured there and for local physicians and hospitals which had treated those injured employees; and Massachusetts' in providing the measure of recovery for its injured residents and governing the liability and accountability of its resident employers. But while it examined these interests, the Court did not identify one set as superior.[35] It held simply that full faith and credit did not require a forum state to enforce a foreign state's policies and thereby frustrate its own.

Even though the decision seemed to rest heavily on interest identification, *Pacific Employers* left unanswered the question of just how those interests were to be utilized in applying a standard for constitutional limitation on choice of law. It was apparent that the Court was moving away from the *Clapper* emphasis on the need for the forum to show "obnoxiousness."[36] But just what would have to be shown was left unclear.[37]

The evolution from a foreign-biased standard to a forum-biased test for full faith and credit to public acts was apparent in the 1955 decision in *Carroll v. Lanza*,[38] still another worker's compensation case. The employee and his employer were residents of Missouri, but the injury occurred on the job in Arkansas as a result of the alleged negligence of the general contractor. The law of Missouri, where the employment contract was executed, prohibited a negligence action against a general contractor, declaring the employee's exclusive remedy to lie under the workmen's compensation statute. Arkansas, the forum state, provided for a recovery against a negligent third party.

The Supreme Court affirmed the decision of the Arkansas court in awarding the plaintiff a recovery against the general contractor under Arkansas law,[39] holding that Arkansas was not compelled to give full faith and credit to the exclusive remedy statute of Mis-

35. Indeed, to do so would have been difficult, it seems.

36. Interestingly, however, this language reappears in Nevada v. Hall, 440 U.S. 410 (1979), in which the majority opinion notes that a Nevada sovereign immunity statute limiting damages in a tort claim against the state would be "obnoxious" to the California forum's policy. *Id.* at 424. But the Court went on to rest its decision upholding California's refusal of full faith and credit to Nevada law upon a "substantial" California interest in protecting residents injured on its highways. *Id.* at 424-27.

37. The requirement that comparative interests of affected states be weighed seems clearly to have been abandoned in the subsequent decision in Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469 (1947). *See* E. SCOLES & P. HAY, *supra* note 6, at 91 n.10.

38. 349 U.S. 408 (1955).

39. *Id.* at 413.

souri. As in the opinions of *Alaska Packers* and *Pacific Employers*, traces of "obnoxiousness" language were found in *Carroll*.[40] But the Court did not frame its analysis in terms of obnoxiousness, nor did it compare the interests of the two states to determine which was superior. Instead, the Court confined the focus of its decision to identifying the "legitimate interest"[41] of the forum in providing relief to persons injured in the state[42] and the consequent need to compensate for health care providers and family members, as well as the injured party.[43]

After *Carroll*, the Supreme Court seemed to have established a comparatively unrestrictive standard for assessing the strength of the full faith and credit mandate for public acts. So long as it appeared that the forum state had a "legitimate interest" in having its law applied in contravention of a foreign state's law, it was free to do so without full faith and credit infirmity. The rule of the *Clapper* case was no longer the standard. That was not to say that the place of injury, rather than the seat of the employment relation, must always be given full faith and credit. Rather, either state would be permitted to apply its law, so long as it had a significant legitimate nexus with the cause of action and the issue to which its law would be applied.[44] And the Supreme Court would not engage in a balancing of "competing interests" to determine which of the interested states was constitutionally entitled to have its law applied.[45]

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40. The Court noted that Arkansas had not adopted "any policy of hostility to the public Acts of Missouri." *Id.*

41. *Id.*

42. The Court described these interests as "large and considerable." *Id.*

43. The Court acknowledged, however, that these interests in protecting injured residents, assuring funds for local medical care, and preventing dependents of the injured party from being left destitute were not pertinent for the forum in this case, since the injured party had returned to Missouri and was not a burden to Arkansas or its institutions. Nonetheless, the Court said, "[W]e write not only for this case and this day alone, but for this type of case." *Id.*

44. *See* R. LEFLAR, *supra* note 7, § 57. While the line of cases discussed above dealt with workmen's compensation, the principles developed there have been applied in most other choice of law areas as well. There have been a few exceptions in certain fields, however, notably those involving fraternal benefit societies. *See* Order of United Commercial Travelers v. Wolfe, 331 U.S. 586 (1947). *See also* R. Weintraub, *supra* note 27, at 524-27.

45. In a recent decision, the Supreme Court continued to adhere to the standard of permitting a forum state with a significant contact and legitimate interests to refuse full faith and credit to the laws of a sister state, but clouded its identification of the appropriate standard by citing both *Alaska Packers* and *Pacific Employers* in support of its holding. Thomas v. Washington Gas Light Co., 448 U.S. 261, 277-79 (1980).

B. *Due Process*

The landmark Supreme Court decision utilizing due process as a constitutional limitation on a state's choice of law was *Home Insurance Co. v. Dick.*[46] Decided in 1930, the *Dick* case set forth the constitutional principle and interpretation from which present day standards have evolved.[47] Plaintiff Dick was a Texas resident who, by assignment, had acquired rights to a fire insurance policy on a tugboat. The policy was originally issued by a Mexican insurer to a Mexican resident and covered the boat while it operated in Mexican waters. The loss occurred in Mexico, and more than a year later Dick brought suit in a Texas court against the Mexican insurance company and two New York companies which had reinsured the risk,[48] to recover under the policy. The policy contained a clause, permitted by Mexican law, which prohibited actions filed more than one year after the date of the loss. However, Texas law invalidated contract provisions limiting the right to sue on the contract to less than two years. The Texas Supreme Court upheld

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46. 281 U.S. 397 (1930).

47. Prior to *Dick*, there were several decisions in the due process area that related to choice of law. Perhaps most prominent in that group were three cases which involved disputes over insurance contracts and in each of which Missouri was the forum state. In New York Life Ins. Co. v. Head, 234 U.S. 149 (1914), a policy provided by its terms that it should be deemed issued in New York, the home state of the insurer. The insured had submitted the policy application in Missouri, and later transferred the policy to his daughter living in New Mexico. She then borrowed against the policy, and refused to repay the loan. Suit was later brought in Missouri, and the Supreme Court refused to allow the forum court to compel the insurer to pay the face amount of the policy due; instead, the company was permitted to apply the reserve to discharge the loan pursuant to New York law. The Court reasoned that the law of the place of contracting, New York, must control. In New York Life Ins. Co. v. Dodge, 246 U.S. 357 (1918), again the Missouri court entertained suit on a policy issued in New York, and again the Supreme Court held that Missouri could not apply its own law, despite the fact that the insured was at all pertinent times a Missouri resident. In Mutual Life Ins. Co. v. Leibing, 259 U.S. 209 (1922), the policy was issued in Missouri, which also had other contacts with the transaction. Again, the Court upheld application of the law of the place of contracting, this time the Missouri forum. Clearly in these decisions, the Court viewed the choice of law decision as constitutionally mandated, although with the exception of *Dodge*, the results were probably the same as if the substantial contacts test in *Dick* had been applied. *See infra* text accompanying notes 48-54; *see also* Currie, *supra* note 31, at 30-41 (1958).

For other due process decisions prior to *Dick*, see Allgeyer v. Louisiana, 165 U.S. 578 (1897); New York Life Ins. Co. v. Cravens, 178 U.S. 389 (1900); St. Louis Cotton Compress Co. v. Arkansas, 260 U.S. 346 (1922); Aetna Life Ins. Co. v. Dunken, 266 U.S. 389 (1924).

48. *Dick* predicated jurisdiction over the defendants on a quasi-in-rem theory because of their ownership of Texas property unrelated to the transaction sued upon. Such jurisdiction would likely not be upheld today after Shaffer v. Heitner, 433 U.S. 186 (1977), and Rush v. Savchuk, 444 U.S. 320 (1980).

judgment for the plaintiff, applying the Texas rule in contravention of the policy provision, which, the court said, offended Texas' public policy.

The United States Supreme Court reversed, holding that the imposition of Texas law upon these defendants to deprive them of a contractual defense violated due process as an impermissible taking of a property right.[49] The Court held that because "nothing in any way relating to the policy sued on, or to the contracts of reinsurance, was done or required to be done in Texas . . . ,"[50] the Texas court had no power to apply its law to the parties or to the contracts which formed the basis of the suit.[51] Despite the jurisdictional power of the Texas court to try the case, the lack of any substantial connection between Texas and the cause of action at issue rendered a choice of Texas law to govern the substantive issues constitutionally impermissible.[52]

It has been argued that the *Dick* decision rests in part upon the Court's recognition of the "unfair surprise" which was imposed upon the insurance carriers by the attempted application of Texas law.[53] However, several factual details weaken this contention, including the loss payable clause naming a Texas vessel owner, and the need for the insurer to give written consent to assignment of the policy to Dick, a Texas resident.[54] Rather, the *Dick* case properly represents the Court's exercise of limitations on a state's arbitrary and unreasonable application of its own law in an extraterritorial fashion.[55]

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49. *Dick*, 281 U.S. at 408.

50. *Id.*

51. *Id.* at 410.

52. The Texas Supreme Court attempted to justify the application of its limitations statute by characterizing the statute as procedural. However the U.S. Supreme Court rejected this ruling, noting that inasmuch as the statute purported to eliminate a property (contract) right of the insurers, it was substantive for purposes of this litigation, and due process rights attached to it. *Id.* at 405-06.

One commentator has observed:

> From the *Dick* decision it is suggested that the following rule may be distilled: If a state does not have sufficient contact with the parties or with the facts to make it reasonable for its law to be used in adjudicating a controversy arising between the parties on those facts, application of the law of that state will violate the due process clause of the fourteenth amendment to the federal constitution.

Weintraub, *supra* note 6, at 455.

53. *See* Kirgis, *supra* note 4, at 108 n.53.

54. *See* R. WEINTRAUB, *supra* note 27, at 502-03. Weintraub develops the "unfair surprise" argument in order to rebut it.

55. *See* Currie, *supra* note 31.

Four years later the Supreme Court in *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*[56] expanded the reach of the due process limitation. Suit was brought in Mississippi to recover on a surety bond contract executed in Tennessee, covering the Mississippi employer's losses from embezzlement by employees. The loss in question occurred in Mississippi. As in *Dick*, plaintiff brought suit after the expiration of the contractually agreed upon time limit for filing a claim. Such a contractual limitation was valid in Tennessee but invalid in Mississippi. The Mississippi court applied its own law, struck down the contractual defense, and awarded judgment to the plaintiff.[57] Relying on *Dick*, the Supreme Court reversed, holding that, without more contacts between Mississippi and the transaction than were apparent from the record, such an application of Mississippi law to an extraterritorial transaction was an unconstitutional taking of a defendant's property without due process of law.[58] Interestingly, however, the Court placed all its emphasis on the place "where the contract was made,"[59] to the exclusion of other states' legitimate contacts and interests with the transaction. As in *Clapper*,[60] the Court's language clearly indicated the potential for developing a nationwide set of rules for choice of law purposes, deriving authority for this doctrine from the due process clause.[61] But by focusing so intently on this one "chosen contact," the Court lost sight of the fact that Mississippi did have substantial and significant *other* contacts, such as the plaintiff's domicile and the situs of the loss, thus arguably giving it a reasonable relation to the contract. Therefore the *Delta* case can be seen as a (fortunately) short-lived aberration of due process as it recently had been articulated in *Dick*.[62]

In the 1954 decision of *Watson v. Employers Liability Assur-*

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56. 292 U.S. 143 (1934).

57. *Id.* at 148-50.

58. *Id.* at 150. *See* R. LEFLAR, *supra* note 7, § 58.

59. For earlier decisions which had similarly invoked the "place of making" the contract as the constitutional talisman, see *supra* note 47. This, of course, was the traditional choice of law rule and remains in effect in many states today. *See* R. WEINTRAUB, *supra* note 27, at 349.

60. *See supra* text accompanying notes 16-19 & 26.

61. A similar test was invoked at about the same time in the area of full faith and credit in Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935). *See supra* text accompanying notes 29-31.

62. It has been suggested that *Delta* would be decided differently if argued today. *See* R. LEFLAR, *supra* note 7, § 58; E. SCOLES & P. HAY, *supra* note 6, at 83.

ance Corp.,[63] the impact of due process on choice of law limitations shifted again, moving back to the course originally charted by the *Dick* case. Suit was brought in Louisiana by a Louisiana resident against the liability insurance carrier for a hair-care manufacturer, for personal injury sustained in Louisiana through the use of the insured's products. Plaintiff's reliance on the Louisiana statute permitting direct action against an insurer was challenged as being a violation of due process,[64] since the insurance policy was neither negotiated nor issued in Louisiana.[65]

The Supreme Court upheld the direct action in *Watson*, despite a provision in the insurance policy prohibiting such suits before a liability judgment had been obtained against the insured.[66] Distinguishing the case from both the *Dick* and the *Delta* due process decisions, the Court noted that the injury in the case at bar had occurred in the forum state, Louisiana, because of the use of the insured's product there. As both the place of the tort and the insured's domicile, Louisiana was found to have a legitimate interest in protecting persons injured there,[67] as well as a substantial connection with the occurrence creating liability.[68]

Significantly, the Supreme Court in *Watson* chose not to require the single factor of the "place of contracting"[69] to dictate a consti-

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63. 348 U.S. 66 (1954).

64. *Id.* at 76. The application of the statute was also challenged on full faith and credit grounds. The Court disposed of this contention by relying essentially on the presence of the same "contacts" and interests which were found to satisfy due process. *Id.* This decision highlighted the similarity of the standards for the two constitutional limitations at that time. *See* Speidel, *Extraterritorial Assertion of the Direct Action Statute: Due Process, Full Faith and Credit and the Search for Governmental Interest*, 53 NW. U.L. REV. 179 (1958).

65. The policy was executed and delivered in Illinois and Massachusetts, and both states upheld the validity of a policy provision forbidding a direct action. 348 U.S. at 68.

66. *Id.* at 72-73.

67. The majority opinion emphasized that the substantial nature of Louisiana's relationship with the transaction distinguished the *Watson* case from both *Dick* and *Delta*. *Id.*

68. Justice Black clearly identified this connection:

> Persons injured or killed in Louisiana are most likely to be Louisiana residents, and even if not, Louisiana may have to care for them. Serious injuries may require treatment in Louisiana homes or hospitals by Louisiana doctors. The injured may be destitute. They may be compelled to call upon friends, relatives, or the public for help. Louisiana has manifested its natural interest in the injured by providing remedies for recovery of damages. It has a similar interest in policies of insurance which are designed to assure ultimate payment of such damages . . . .

Id. at 72.

69. This was the traditional choice of law determinant, in effect in virtually all states at the time *Watson* was decided. *See* R. LEFLAR, *supra* note 7, § 145; *see also supra* notes 47 & 59.

tutionally required choice of law decision.[70] Instead, the Court moved away from a view which would posit choice of law as a constitutional matter and spoke to the interests and contacts of the controlling state. As a result, the due process clause reacquired a place as the limiting, rather than the decisionmaking, instrument for choice of law purposes.

The Court was consistent in its view of the proper role of due process in the choice of law arena when, ten years later, it decided *Clay v. Sun Insurance Office, Ltd.*[71] While residing in Illinois, Clay had purchased an insurance policy against casualty or fire loss to his personal property, then situated in Illinois. Subsequently, he moved the property with him to Florida, where it was destroyed by fire. More than one year after the loss occurred, the insured brought suit on the policy in a federal district court in Florida. The policy contained a provision barring suit more than one year after a loss, and this clause was asserted as a defense by the insurer. However, Florida law refused to recognize any such provision limiting the time for filing suit to less than five years.[72] The Supreme Court held the application of Florida law to invalidate the policy defense[73] to be consistent with due process.

In declining to require application of Illinois law as urged by the insurer, the Court again refused to seize upon a single predetermined contact as imposing a choice of law decision upon the state court. Despite the fact that the contract was made in Illinois, the presence of the plaintiff and the insured property in Florida at the time of the loss, facts known to the insurer,[74] provided the forum state with "ample" contacts[75] to make the choice of Florida law constitutionally permissible.[76] As it had in *Watson*, the Court dis-

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70. Arguably, the Court could have seized upon Louisiana as the "place of the tort," since the injury took place there, and by this characterization given support to its constitutional decision within the framework of traditional choice of law rules. Instead, the majority spoke in terms of interests and connections.

71. 377 U.S. 179 (1964).

72. This statute is notably similar to the Texas statute at issue in an earlier due process decision, Home Ins. Co. v. Dick, 281 U.S. 397 (1930). *See supra* text accompanying notes 46-55.

73. In an earlier decision, the Supreme Court had directed that the Florida statute be referred for construction to the Florida Supreme Court through its certification process, in order to decide whether a Florida court would apply the statute to the fact situation posed by the *Clay* case. Clay v. Sun Ins. Office, Ltd., 363 U.S. 207 (1960). The Florida Supreme Court found that the Florida statute did apply. 133 So. 2d 735 (Fla. 1961).

74. 377 U.S. at 182.

75. *Id.* at 183.

76. The same contacts which satisfied due process requirements were found sufficient to

tinguished the decisions in *Dick* and *Delta* as falling short of the due process threshold requirement of contacts which had been satisfied in *Clay*.[77] Moreover, the Court stressed that there was every reason for the insurer to expect that such a claim would be governed by Florida, rather than Illinois, law. The insurer was well aware that the insured and the property were situated in Florida; indeed, the policy was issued with full knowledge that coverage would remain in force if the property were moved to another state.[78] Since the insurer elected to continue coverage and received premiums after Clay's move to Florida, the Court found no unfair surprise from the application of Florida law,[79] a relevant consideration in a due process analysis.[80] The due process clause, then, required only that the forum state have sufficient contacts "with the parties and the occurrence or transaction"[81] to make it fair and reasonable for the state's interests to be furthered by the choice of its law to be applied.

Recently, both the due process and the full faith and credit requirements for choice of law were raised in a troubling decision in yet another insurance case before the Supreme Court.

III. The Impact of *Allstate Insurance Co. v. Hague*[82]

A. *The Decision*

Ralph Hague was killed in Wisconsin when his son's motorcycle, on which he was a passenger, collided with an automobile. Neither driver was insured. Hague did carry uninsured motorist coverage, however, on each of three vehicles owned by him. The policy was issued by Allstate Insurance Company, with limits of $15,000 on the coverage for each of the vehicles.

After her husband's death, Mrs. Hague moved from Wisconsin

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meet the demands of the full faith and credit clause. *Id.*

77. In disposing of the *Dick* and *Delta* decisions, the Court said, "Those were cases where the activities in the State of the forum were thought to be too slight and casual . . . to make the application of local law consistent with due process, or wholly lacking . . . . No deficiency of that order is present here . . . ." *Id.* at 181-82.

78. The *Clay* decision emphasized the fact that the policy was entitled, "Personal Property Floater Policy (World Wide)." *Id.* at 182.

79. *See* Kozyris, *Reflections on Allstate — The Lessening of Due Process in Choice of Law*, 14 U.C.D. L. Rev. 889, 904 (1981); *see also* R. Weintraub, *supra* note 27, at 508-10.

80. The "unfair surprise" consideration was also given prominent treatment in Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981); *see infra* text accompanying notes 115-19.

81. *Allstate*, 449 U.S. at 308.

82. 449 U.S. 302 (1981).

and became a domiciliary of Minnesota. She was appointed personal representative of her husband's estate, and brought suit against Allstate to recover the uninsured motorist benefits under the policy. While it appeared that Wisconsin law would limit any recovery to $15,000,[83] Minnesota clearly permitted "stacking" of uninsured motorist limits on multiple vehicle coverages,[84] allowing the Hague estate to recover $45,000.

Allstate contended that Wisconsin law must be applied, inasmuch as the accident occurred there, the deceased and both drivers were domiciled there at the time of the accident, and the policy in question was delivered there. Nevertheless, the Minnesota court chose to apply Minnesota law,[85] and that judgment was affirmed[86] by a sharply divided United States Supreme Court.[87]

The application of its own law by the Minnesota Supreme Court was challenged on both full faith and credit and due process grounds. Writing for the plurality,[88] Justice Brennan found that Minnesota had a sufficiently "significant aggregation of contacts with the parties and the occurrence"[89] to render application of its own law constitutionally permissible under the circumstances. Specifically, the plurality identified as significant three contacts: the fact that Hague had been a member of the Minnesota work force for fifteen years and had commuted to his job daily;[90] the fact that Allstate did business in Minnesota on a continuing basis;[91] and Mrs. Hague's post-accident acquisition of a Minnesota domicile

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83. The Minnesota Supreme Court was uncertain how Wisconsin law would be applied in this case. A policy provision forbidding stacking of uninsured motorist policy limits would have been upheld by Wisconsin law, and the Minnesota Supreme Court interpreted the *Hague* policy as containing such a prohibitory provision; however, it held that such a provision would not be honored under Minnesota law. Hague v. Allstate Ins. Co., 289 N.W.2d 43, 48 (Minn. 1978), *aff'd after rehearing en banc*, 289 N.W.2d 50 (Minn. 1979).

84. This view permitting "stacking" is the majority position in the United States. *See* Hague v. Allstate Ins. Co., 289 N.W.2d at 50.

85. 449 U.S. at 306-07. See Hague v. Allstate Ins. Co., 289 N.W.2d 43, 49-50 (Minn. 1978), in which the Minnesota Supreme Court relied in large part upon application of "the better rule of law" factor in the analytical framework proposed by Professor Leflar. *See* R. LEFLAR, *supra* note 7, § 107.

86. 449 U.S. at 320.

87. The Supreme Court affirmed the judgment of the Minnesota Supreme Court in a 4-1-3 decision. Justices Brennan, White, Marshall, and Blackmun joined in the plurality opinion. Justice Stevens concurred in the affirmance in a separate opinion. Justices Powell and Rehnquist and Chief Justice Burger dissented. Justice Stewart did not take part in the case.

88. 449 U.S. at 304-20 (opinion by Brennan, J.).

89. *Id.* at 320.

90. *Id.* at 313-14.

91. *Id.* at 317.

and subsequent appointment as representative of the Hague estate.[92] Without distinguishing between the due process and full faith and credit challenges,[93] the plurality held that these contacts gave Minnesota the requisite "state interests"[94] to satisfy constitutional limitations on its choice of law decision.

Justice Stevens concurred in the judgment of the plurality but identified separate bases for the satisfaction of the full faith and credit and the due process clauses.[95] On the one hand, the absence of "any direct or indirect threat to Wisconsin's sovereignty"[96] negated any compulsion for Minnesota to accord full faith and credit to Wisconsin law.[97] As for due process, Justice Stevens found no unfairness or unreasonableness in subjecting Allstate to the application of Minnesota law.[98]

Justice Powell's dissent[99] focused on a perceived absence of significant contacts, either separately or in the aggregate, to satisfy constitutional limitations on Minnesota's choice of forum law. Justice Powell viewed this absence of sufficient meaningful contacts as evidence of a lack of any legitimate forum interest which would be furthered by the choice of its own law. The lack of such an interest would require a finding that Minnesota exceeded constitutional re-

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92. *Id.* at 318-19.

93. The plurality opinion recognized the similarity of choice of law limitations under both due process and full faith and credit, particularly after the demise of the "weighing of interests" test of *Alaska Packers*, *supra* text accompanying notes 29-31. 449 U.S. at 308 n.10.

94. 449 U.S. at 320.

95. *Id.* at 322. Justice Stevens read the full faith and credit clause as protecting each state's interest in having its own legitimate interests, its own sovereignty, respected by sister states. The due process provision, however, was seen by Justice Stevens as guarding against application of forum law in a manner which would be arbitrary or unfair. *Id.* at 322-23, 326-27. For other critical views suggesting separate functions for due process and full faith and credit in limiting choice of law decisions, see Kirgis, *supra* note 4; Martin, *supra* note 4; Reese, *Legislative Jurisdiction*, 78 COLUM. L. REV. 1587 (1978).

96. 449 U.S. at 325.

97. Because the insurance policy provided coverage for accidents in any state, and therefore the insurer knew that in a given situation the law of a state other than Wisconsin might be applied to construe the contract, Justice Stevens concluded that Wisconsin had no legitimate interest in having its "no stacking" rule applied to this case. It is suggested that this conclusion may not follow logically. Justice Stevens further concluded that, in the absence of a Wisconsin interest, "it [was] unnecessary to evaluate the forum State's interest in the litigation in order to reach the conclusion that the Full Faith and Credit Clause does not require the Minnesota courts to apply Wisconsin law . . . ." 449 U.S. at 326. This certainly would be a novel approach to the constitutional standard if it were to become a majority view.

98. Nor to the law of any other "stacking" state, since the policy would have covered an accident in any state. 449 U.S. at 327-30.

99. *Id.* at 332-40.

strictions in the *Hague* case.[100]

B. *Analysis*

Significantly, all of the justices who participated in the *Hague* decision seemed to agree that the limitations imposed on choice of law decisions by the full faith and credit clause and the due process clause are now to be tested under essentially the same standard.[101] Clearly the time has passed when the Constitution would be interpreted to mandate a single choice of law possibility in virtually every case with multistate features.[102] Rather, to "pass constitutional muster," it is sufficient now that the state whose law is applied have significant contacts "with the parties and the occurrence or transaction,"[103] sufficient to create legitimate interests in having its law applied. This single test seems to express the standard as it has evolved in the full faith and credit realm with *Carroll*,[104] and in the field of due process as evidenced by *Watson*[105] and *Clay*.[106]

The disturbing aspect of *Hague* is the plurality's dubious manner of applying this standard. Justice Brennan has taken three Minnesota contacts, each of rather questionable significance, and, by the process of "aggregation," has found a measure of "significance" sufficient to pass the constitutional threshold. To evaluate the Court's action, each of these contacts should be considered separately.

The first contact, considered of great weight by the plurality, was the fact that Hague was a member of Minnesota's work force for fifteen years and commuted daily to the forum state in that

100. "Neither taken separately nor in the aggregate do the contacts asserted by the plurality today indicate that Minnesota's application of its substantive rule in this case will further any legitimate state interest." 449 U.S. at 339 (Powell, J., dissenting).

101. *Id.* at 308 n.10 (plurality opinion); *id.* at 322 (Stevens, J., concurring); *id.* at 332 (Powell, J., dissenting).

102. "Implicit in . . . [the inquiry in this case] is the recognition, long accepted by this Court, that a set of facts giving rise to a lawsuit, or a particular issue within a lawsuit, may justify, in constitutional terms, application of the law of more than one jurisdiction." 449 U.S. at 307 (plurality opinion).

103. *Id.* at 308.

104. Carroll v. Lanza, 349 U.S. 408 (1955). *See supra* text accompanying notes 38-45.

105. Watson v. Employers Liability Assurance Corp., 348 U.S. 66 (1954). *See supra* text accompanying notes 63-70.

106. Clay v. Sun Ins. Office, Ltd., 377 U.S. 179 (1964). *See supra* text accompanying notes 71-81.

capacity.[107] While conceding that "employment status may implicate a state interest less substantial than does resident status . . .," the opinion goes on to note the "police power responsibilities" Minnesota has toward non-resident employees.[108] All these arguments may be true, but they seem irrelevant when viewed in light of the issue raised in the *Hague* case. The extent of uninsured motorist coverage afforded to Hague has no relationship to his employment status, nor does it trigger any regulatory interest of Minnesota in controlling the details of his employment. Even if Hague had been commuting to work at the time of the accident, the importance of this contact would have been questionable;[109] as it was, the contact was insignificant.

It is true, as the plurality points out, that, for some purposes the place of employment may be a significant contact. Had the issue in *Hague* involved the choice of an appropriate workmen's compensation statute,[110] for example, this contact alone would have been sufficient to justify application of Minnesota law.[111] But with respect to the "stacking" issue, Hague's employment status in Minnesota is really a "non-contact."

Another contact, Mrs. Hague's move to Minnesota and appointment as personal representative shortly before filing suit, properly bears no weight on the issue of the extent of decedent's insurance coverage.[112] Moreover, the obvious potential for forum-shopping makes substantive consideration of such a "contact" both unwise and dangerous as an invitation to other litigants to seek the same advantage.[113] Prior case law in this area had indicated that such a

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107. 449 U.S. at 313-17.

108. *Id.* at 314.

109. But see Justice Brennan's plurality opinion to the contrary, 449 U.S. at 314: "That Mr. Hague was not killed while commuting to work or while in Minnesota does not dictate a different result." *See also* E. SCOLES & P. HAY, *supra* note 6, at 86.

110. This was precisely the issue in Cardillo v. Liberty Mut. Ins. Co., 330 U.S. 469, 475-76 (1947), a decision cited by the plurality in support of the significance of the "commute to work" contact in *Hague*. 449 U.S. at 314. It is suggested that, while this contact was indeed significant for the issue posed in *Cardillo*, it had no real significance in *Hague*.

111. *See also* Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935).

112. The plurality goes out of its way to note that this post-accident change of residence was not accompanied by any improper motive or desire to facilitate forum shopping by Mrs. Hague. However, this observation seems to beg the question whether such a post-accident residence has constitutional relevance in any event.

113. "If a plaintiff could choose the substantive rules to be applied to an action by moving to a hospitable forum, the invitation to forum shopping would be irresistible." 449 U.S. at 337 (Powell, J., dissenting). *See* Lowenfeld & Silberman, *Choice of Law and the Supreme Court: A Dialogue Inspired by* Allstate Insurance Co. v. Hague, 14 U.C.D. L. REV. 841, 861-

post-occurrence residency change would not create an interest in the forum sufficient to permit it to apply its own law.[114] Likewise, there was no significance in the Hague estate's being administered in Minnesota, other than the fact that Mrs. Hague chose to have probate take place there. Again, it seems, Justice Brennan seized on a "non-contact."

Finally, the active business of Allstate in Minnesota was seen as another contact of significance. This factor supposedly put the insurer on notice that it might be subject to Minnesota's law on stacking of policy limits,[115] so that it could not claim unfair surprise at the choice of law decision made by the Minnesota courts.[116] Yet this position is not persuasive as to why the insurer should have anticipated application of Minnesota law to a claim made on a policy issued in Wisconsin to a Wisconsin resident, particularly for an occurrence which took place in Wisconsin. Both the plurality[117] and concurring[118] opinions rely on the *Watson* and *Clay* decisions as support for the significance of the insurer's doing business in the forum state, because those cases upheld the forum's choice of its own law despite the policy's having been issued in a sister state. However, in both *Watson* and *Clay*, the loss insured against occurred in the forum state. It is suggested that the place where the loss occurred is a major factor distinguishing those decisions from the *Hague* case. Is it reasonable to assume that an insurer can legitimately be subjected to application of the law of *any* state where it does business, without some other significant contact between that state and the transaction sued upon?[119] As shown

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62 (1981).

114. John Hancock Mut. Life Ins. Co. v. Yates, 299 U.S. 178 (1936). The plurality opinion attempted to distinguish *Yates* by indicating that that decision had merely found a post-accident residence change "insufficient in and of itself" to permit application of forum law. However, the dissenting opinion noted that the *Yates* decision, in overturning a Georgia court's application of its own law, found that "there was no occurrence, *nothing* done, to which the law of Georgia would apply." 299 U.S. at 182 (emphasis added). Likewise the dissent cited Home Ins. Co. v. Dick, 281 U.S. 397 (1930), in which the Court held that such a post-accident change of residence was "without significance." 281 U.S. at 408. *See* 449 U.S. at 337 (Powell, J., dissenting).

115. 449 U.S. at 317-18.

116. This contact was, in fact, dispositive of the case for Justice Stevens. *See id.* at 329-31 (Stevens, J., concurring).

117. *Id.* at 318 nn.24-25.

118. *Id.* at 328-29 n.20.

119. Indeed, the dissent points out the unrealistic position to which this contention must lead, since Allstate was in fact doing business in all fifty states at the time of this incident. *See id.* at 338 (Powell, J., dissenting).

above, no other *significant* contact between Minnesota and this litigation is apparent.

The plurality relies for its finding of constitutionality in *Hague*, not on any one of the contacts mentioned above, but upon all of them — a "significant aggregation of contacts with the parties and the occurrence."[120] Yet if, upon examination, none of these contacts implicates any legitimate interest by Minnesota in applying its own law, the logic of finding sufficiency through an aggregation of these "non-contacts" is debatable. For this purpose, can the whole be greater than the sum of its parts? Such use of the device of "aggregation" creates dangerous potential for faulty analysis and manipulation, which is capable of undermining the effective use of both full faith and credit and due process as constitutional limitations on choice of law.

Perhaps the essential flaw in the Court's evaluation of the significance and sufficiency of the identified contacts lies in the fact that these contacts were solely with the *parties* in this case, rather than with the *transaction* sued upon.[121] The Court has, over the years, adopted a similar standard for determining whether a forum state's attempted exercise of long-arm jurisdiction violates the due process rights of the parties, usually meaning the defendant. Simply stated, the forum state must have sufficient minimum contacts with the parties or the occurrence so as to make it fair and reasonable for the non-resident party to have to appear in a foreign, often inconvenient, forum to litigate his rights.[122] While various aspects of the transaction sued upon may properly be considered in determining whether "minimum contacts" have been satisfied, i.e., foreign-based activity causing a forum-based injury,[123] the judicial

120. *Id.* at 320. For an excellent discussion of this aspect of the *Hague* opinion, see Comment, *Legislative Jurisdiction, State Policies and Post-Occurrence Contacts in Allstate Insurance Co. v. Hague*, 81 COLUM. L. REV. 1134, 1140 (1981); *see also* R. CRAMTON, D. CURRIE, & H. KAY, CONFLICT OF LAWS: CASES, COMMENTS AND QUESTIONS 451 (3d ed. 1981).

121. To be sure, the plurality opinion indicated that, in order to apply its own law in a choice of law decision, the forum must have sufficient contacts "with the parties *and the occurrence or transaction.*" 449 U.S. at 308 (emphasis added). However, as discussed above, the contacts with the transaction in *Hague* were, at best, insignificant and, at worst, contrived. *See supra* text accompanying notes 109-21.

122. This standard as expressed in International Shoe Co. v. Washington, 326 U.S. 310 (1945), has not changed significantly in its articulation. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Shaffer v. Heitner, 433 U.S. 186 (1977); Hanson v. Denckla, 357 U.S. 235 (1958).

123. *See, e.g.*, Hardy v. Pioneer Parachute Co., 531 F.2d 193 (4th Cir. 1976) (parachute manufactured in Delaware and sold to South Carolina by telephone order, causing injury in South Carolina where it malfunctioned, held to subject foreign manufacturer to jurisdiction

jurisdiction inquiry remains directed toward whether the defendant has "purposefully availed" himself of the "benefits and protections" of the forum state.[124] In other words, the primary focus is on the contacts between the *parties* and the forum state.

The Court has stated on several occasions, albeit in dicta, that the mere presence of judicial jurisdiction does not guarantee satisfaction of legislative jurisdiction for the forum to apply its own law, and vice versa. [125] The purposes for each inquiry are different, though often related; therefore, the emphasis on particular factors, i.e., contacts, may also be different. Because choice of law decisions bear on the merits of a suit — the law which will govern rights and liabilities arising from the transaction or occurrence being sued upon — it seems appropriate that any full faith and credit or due process inquiry for legislative jurisdiction purposes should place primary emphasis on contacts relating to the transaction or occurrence.[126] The problems encountered in the *Hague* decision seem to support such a view. The contacts with Minnesota identified there related almost entirely to the parties in the suit and not to the transaction, which was exclusively Wisconsin-based. It is not suggested that the Court return to a constitutionally mandated choice of law mode, in which a single transactional contact is pre-selected for each category of case, then imposed inflexibly on the states as the requisite choice of law rule. However, an action in which legislative jurisdiction is proposed for a state which has essentially no significant contacts with the transaction or occurrence sued upon, should be viewed skeptically by the courts. The danger is present, as in *Hague*, that none of the so-called "contacts" is of any true significance in satisfying either the due process or the full faith and credit clause.

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in South Carolina); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (defective water heater safety valve manufactured and installed in water heater in Pennsylvania, causing explosion and injury in Illinois, held sufficient to uphold long-arm jurisdiction in Illinois).

124. *World-Wide Volkswagen Corp.*, 444 U.S. at 295; Kulko v. Superior Court, 436 U.S. 84, 93-94 (1978); Shaffer v. Heitner, 433 U.S. at 216. In the *World-Wide Volkswagen* decision, the Supreme Court went to great lengths to emphasize that such contacts as the convenience of a local plaintiff in obtaining relief in the local forum or the forum state's interest in adjudicating a case involving local injury, were to be considered only after it was shown that a defendant had availed himself of the benefits and protection of the forum state. 444 U.S. at 295.

125. Allstate Ins. Co. v. Hague, 449 U.S. 302, 317 n.23 (1981); Kulko v. Superior Court, 436 U.S. at 98; Shaffer v. Heitner, 433 U.S. at 215; Hanson v. Denckla, 357 U.S. at 254.

126. For an excellent debate on this point, see Lowenfeld & Silberman, *supra* note 113.

IV. Conclusion

The Supreme Court has wisely moved away from its earlier efforts toward creating a constitutionally mandated choice of law rule to be imposed on the states under the auspices of the due process clause and the full faith and credit clause. In so doing, it has struggled to articulate the standard by which appropriate constitutional limitations may be imposed on choice of law decisions. While an appropriate standard now seems to be in place, under which both full faith and credit and due process limitations are implemented, the Court has left considerable confusion as to how the standard ought properly to be applied. By what test will the significance of a contact or group of contacts be judged?

The *Hague* decision demonstrates that it is all too easy for irrelevant factors to be given inordinate significance, thereby permitting blatantly inappropriate choice of law decisions to stand in the face of constitutional challenge. The pendulum has swung to a point at which too little control has been retained over a state's ability to choose its own law to determine the merits of an action, inviting future instances of parochialism to occur without effective constraint. With the growth of long-arm jurisdiction, the potential for abuse will be magnified until the Supreme Court demonstrates that reasonable controls can be exercised to guard against excessive provincialism in choice of law decisions.