



# Establishing Personal Jurisdiction in Alabama

In *Ex Parte DBI, Inc. v. Kia Motors*, the Supreme Court of Alabama returns to a “pure” “stream-of-commerce” test.

David G. Wirtes, Jr

## Introduction

Personal jurisdiction concerns the ability of a court to exercise its power over a defendant who performs or causes to be performed specific acts that have effects within a state. Generally, there are two requirements for a court to exercise personal jurisdiction over a non-resident defendant: the court must have statutory authority establishing the scope of its reach over defendants and the limits imposed by the Due Process Clauses of the federal and state constitutions must be satisfied. In Alabama, the extent of a court's personal jurisdiction over a person or corporation is governed by Ala. R. Civ. P. 4.2, Alabama's “long-arm rule.” By this rule, Alabama's courts may exercise jurisdiction over non-resident defendants to the limits of due process under the federal and state constitutions. See *Ex parte Alloy Wheels Int'l*, 882 So. 2d 819, 822 (Ala. 2003). Due Process demands that the defendant have contacts with the forum and be given appropriate notice and an opportunity to be heard. Necessarily, the “limits of due process” are the furthest reaches allowable by binding precedent of the Supreme Court of the United States.

This article begins with a historical analysis of United States Supreme Court and Supreme Court of Alabama decisions concerning personal jurisdiction and, in particular, the stream-of-commerce test for jurisdiction over non-resident tortfeasors. The article next discusses Alabama's short-lived adoption of the more stringent “stream-of-commerce-plus” test for personal jurisdiction, and its recent return to the traditional stream of commerce test in *Ex parte DBI, Inc.*, [Ms. 1071433, May 1, 2009] \_\_\_ So.3d \_\_\_ (Ala. 2009). Finally, the article offers suggestions on what plaintiffs involved in products liability suits should discover in order to prove that Alabama's

courts may exercise personal jurisdiction over foreign product manufacturers and distributors.

## General Principles of Personal Jurisdiction and Due Process:

More than fifty years ago, the United States Supreme Court looked back and “observed a trend toward expanding the permissible scope of state jurisdiction over foreign corporations” due to the facts that “many commercial transactions touch two or more states and may involve parties separated by the full continent [and that] modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity.” *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-23 (1957) (emphasis added). Early on, a state's exercise of jurisdiction was permissible only when the defendant could be served with process within the forum state. See *Pennoyer v. Neff*, 95 U.S. 714 (1878). However, in *International Shoe v. Washington* 326 U.S. 310 (1945), the United States Supreme Court adopted a ‘minimum contacts’ standard: “a defendant must have sufficient minimum contacts within the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.* at 316. These minimum contacts must be established by the defendant's intentional acts. *Ibid.* Later, this test was modified: the defendant must “purposefully avail [ ] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Hanson v. Denckla* 357 U.S. 235, 253 (1958).<sup>1</sup>

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Court fine-tuned personal jurisdiction analyses by emphasizing that for a

defendant's contacts with a forum to be constitutionally sufficient, the contacts must be related to the cause of action and be such that the defendant should “reasonably anticipate being haled into court” there. *Id.* at 295. The Court found that although the defendant, a New York car dealer, could foresee that vehicles it sold might be taken to Oklahoma, its mere sale in New York of an allegedly defective car to a purchaser who was injured in an accident in Oklahoma did not subject it to jurisdiction in Oklahoma. It stated:

[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. 444 U.S. 286 at 297. The Court established a new test for jurisdiction that became known as the “stream-of-commerce” test:

[I]f the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. *Id.* at 297-98 (emphasis added).

Expanding on the *World-Wide* decision, the Court in *Burger King Corp. v. Rudzewicz* determined that, once the burden of proving minimum contacts is met, the contacts “may be considered



in light of other factors to determine whether the assertion of personal jurisdiction would comport with the notions of "fair play and substantial justice." 471 U.S. 462, 476 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)). Such factors include "the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff'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 substantive social policies." *Id.*

Under the stream-of-commerce theory articulated in both *World-Wide* and *Burger King*, a manufacturer that delivers its products into the stream of commerce expecting them to be sold or used throughout the United States has "purposefully availed itself" of doing business in each state and should, therefore, reasonably expect to be haled into court in each state if its product does harm there. However, the Court subsequently struggled with assessing the purposeful availment factor in *Asahi Metal Industry Co. v. Superior Court* 480 U.S. 102 (1987). There, *Asahi*, a Japanese company, manufactured motorcycle tire valves, which it sold to the United States by a Taiwanese tube manufacturer. *Id.* at 106. One of its valves was defective and caused an accident in California. *Id.* at 105. Upon being sued in California, the Taiwanese tube manufacturer filed a third-party complaint, seeking indemnification from *Asahi*. *Asahi* moved to quash service of the summons. *Id.* at 106. The question of jurisdiction over *Asahi* arose after the underlying action was resolved. A sharply divided Court ultimately determined that jurisdiction over *Asahi* was not proper.

Three separate formulations of purposeful availment were stated in three opinions, none of which gained a majority vote on this issue: (1) Justice Brennan's "Stream of Commerce Test," (2) Justice O'Connor's "Stream of Commerce 'Plus' Test," and (3) Justice Stevens's "Volume, Value, and Hazardous Character Test." *Id.* passim. Justice Brennan, with three Justices joining him, considered foreseeability and

the act of placing the product into the stream of commerce to be enough. *Id.* at 117. However, Justice O'Connor, with three Justices joining her, said "something more" is required. Under Justice O'Connor's "Stream of Commerce 'Plus' Test."

The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. *Id.* at 112. Under Justice O'Connor's proposed test, a defendant was required to take some additional step to avail itself of doing business in the forum state. *Id.* Justice Stevens's plurality opinion took the intermediate position that the "constitutional determination[ ] is affected by the volume, the value, and the hazardous character of the components." 480 U.S. at 122. *Asahi* is, to date, the last case in which the Supreme Court "define[d] the contours of [the 'minimum contacts'] test. *Luv n' care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 475 (5th Cir. 2006), (DeMoss J., concurring specially). In the years following, the federal and state courts have split on which *Asahi* test to adopt. See, e.g. *Ex parte DBI, Inc. v. Kia Motors Inc.*, [Ms. 1071433, Ma 1, 2009] \_\_\_ So.3d \_\_\_ (Ala. 2009) at \* 21; see also, 16 James W. Moore et al., *Moore's Federal Practice--Civil* § 108.42 nn. 35 & 36 (3d ed. 2008).

## Representative Alabama Opinions Following the Stream-of-Commerce Test

The Supreme Court of Alabama originally embraced the view of the United States Supreme Court in *World-Wide Volkswagen* and found personal jurisdiction under the traditional stream-of-commerce analysis. For example, in *Alabama Power Co. v. VSL Corp.*, 448 So.2d 327 (Ala. 1984), a Minnesota manufacturer fabricated for another

Minnesota corporation trusses ultimately for use in the Farley Nuclear Power Plant. The manufacturer was subject to long-arm jurisdiction in Alabama because it was reasonably foreseeable that the trusses would make their way into Alabama and, if defective, might subject the corporation to a damages suit in an Alabama court. The Supreme Court of Alabama cited with approval *Gray v. American Radiator and Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961): "If a corporation elects to sell its products for ultimate use in another state, it is not unjust to hold it answerable there for any damage caused by defects in those products." *Alabama Power Co.*, 448 So.2d at 329. The fact that the Minnesota manufacturer knew the trusses would be used in Alabama, coupled with the totality of the circumstances, made it reasonably foreseeable and fair to require the manufacturer to defend a suit in Alabama. 448 So.2d at 329.

In *Mann v. Frank Hrubetz & Co., Inc.*, 361 So. 2d 1021 (Ala. 1978), the Court held that a manufacturer of a carnival attraction knew or reasonably should have known that the attraction would be used as a public attraction in several states including Alabama; thus, it did not violate due process to require the manufacturer to defend a products liability suit in Alabama when an accident occurred in Alabama:

As a general proposition, if a corporation elects to sell its products for ultimate use in another state, it is not unjust to hold it answerable there for any damage caused by defects in those products. Advanced means of distribution and other commercial activity have made possible these modern methods of doing business, and have largely effaced the economic significance of State lines. By the same token, today's facilities for transportation and communication have removed much of the difficulty and inconvenience formerly encountered in defending lawsuits brought in other States.

361 So.2d at 1024, quoting *Gray v. American Radiator and Standard Sanitary Corp.*, *supra*, 176 N.E.2d at 776.

We do not regard it as offensive to fair play or substantial justice or an undue burden on foreign trade to



# Establishing Personal Jurisdiction in Alabama

require a manufacturer to defend his product wherever he himself has placed it, either directly or through the normal distributive channels of trade. If it is clearly foreseeable as a result of trade with a foreign state that injury from a defective product (if it occurs) would occur in that state, the hardship of defending the product in that state in our judgment must be assumed as an attribute of foreign trade.

*Id.* 361 So.2d at 1024, quoting *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 235 (9th Cir. 1969) (emphasis omitted).

Where, as here, a manufacturer sells its product to a national distributor, knowing the product will be used in all states, it does not violate due process to require the manufacturer to defend a products liability suit in that state where the accident occurs. 361 So.2d at 1025, quoting *Sells v. International Harvester Co.*, 513 F.2d 762-63 (5th Cir. 1975).

Similarly, *Bryant v. Ceat, S.p.A.*, 406 So.2d 376 (Ala. 1981), involved an Italian manufacturer of a defective tire that was held subject to suit in Alabama when the tire exploded. The Court quoted from *World-Wide Volkswagen* as follows:

[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other states, it is not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.

406 So. 2d at 378-79, quoting 444 U.S. at 297-98 (emphasis omitted).

## Alabama's Erroneous Adoption of Justice O'Connor's "Stream-of-Commerce Plus' Test"

The Supreme Court of Alabama strayed from the traditional stream-of-commerce analysis when it decided *Ex Parte McInnis*, 820 So. 2d 795 (Ala. 2001). In *McInnis*, a Delaware corporation formulated, manufactured, labeled, and distributed a product named 'Fix-A-Flat Non-Explosive Formula', which was used to inflate tires. *Id.* at 797. Contrary to its label, the product's propellant was explosive, and consequently caused the death of an Alabama man. *Id.* at 799. The widow of the deceased brought suit in Alabama against the three principal officers and owners of the manufacturer of Fix-A-Flat, Snap Products, Inc.; however, the agents argued that Alabama did not have personal jurisdiction over them. *Id.* at 799-801. Relying on Justice O'Connor's plurality language in *Asahi*, the Supreme Court held that Alabama's exercise of jurisdiction was proper because the agents had "engage[d] in actions 'purposefully directed toward the forum state' so as to 'indicate an intent or purpose to serve the market'" in Alabama. *Id.* at 804 (quoting *Asahi Metal Industry Co. v. Superior Court* 480 U.S. at 112 (O'Connor, J.) (plurality opinion)).

The Supreme Court of Alabama next expressly invoked the "Stream of Commerce 'Plus' Test" in *Ex parte Alloy Wheels International, Ltd.*, 882 So. 2d 819, 827 (Ala. 2003). Alloy Wheels, an English manufacturer of aluminum alloy wheels, supplied wheels to "Land Rover Group, which manufactured the Land Rover discovery driven by" the plaintiff's decedent. *Id.* at 825. One of those wheels failed during ordinary operation of a Land Rover in Alabama and the plaintiff's wife died in the ensuing accident. The Supreme Court of Alabama affirmed a dismissal of Alloy Wheels on the basis of a want of personal jurisdiction. Based on affidavits of the operations director of Alloy Wheels in the United Kingdom, and based on the Court's conclusion that "none of the plaintiff's materials refutes the statements of fact sworn by [the U.K. operations director] in the affidavits," *id.* at 826, the Court held that there was no evidence establishing sufficient minimum contacts between Alloy Wheels and the State of Alabama. *Id.* at 827. The Court's opinion in *Alloy Wheels*

relied upon the O'Connor plurality opinion in *Asahi* in requiring the plaintiff to submit "substantial evidence that Alloy Wheels 'purposefully directed' activities 'at the forum State [other] than the mere act of placing a product in the stream of commerce.'" 882 So. 2d at 827. By requiring activity directed expressly toward Alabama rather than toward the national American market, including Alabama, the Court not only stopped well short of the meaning of the "limits of due process" but also failed to follow its own precedents in *Alabama Power Co. v. VSL Corp.*, *Mann v. Frank Hrubetz & Co., Inc.*, and *Bryant v. Ceat, S.p.A.*, as well as *World-Wide Volkswagen's* admonition that a defendant is subject to jurisdiction from contacts arising from its efforts "to serve, directly or indirectly, the market for its products in other States." *World-Wide*, 444 U.S. at 297.

## The Alabama Supreme Court Returns to a Pure "Stream of Commerce" Test for Personal Jurisdiction in *Ex parte DBI, Inc.*

On May 1, 2009, the Supreme Court of Alabama concluded that what "[it] requires of litigants under *Alloy Wheels* goes beyond the due process required by the United States Constitution and the Alabama Constitution..." *Ex parte DBI, Inc. v. Kia Motors Inc., et al.* [Ms. 1071433 at \*29] \_\_\_ So.3d \_\_\_, (Ala. May 1, 2009). As stated in an earlier mandamus opinion, plaintiff Leytham sued a South Korean manufacturer, DBI, Inc. f/k/a Duck Boo International Co., Ltd. ("DBI"), following an automobile accident that resulted in the death of her daughter. *Ex Parte Duck Boo Intern. Co., Ltd.* 985 So. 2d 900 (Ala. 2007). At the time of the accident, the deceased was driving a vehicle manufactured by Kia Motors and equipped with a defective seat belt manufactured by DBI. *Id.* at 902. DBI petitioned for a writ of mandamus, asking the Court "to direct the trial court to dismiss the claims against it on the basis that the trial court lack[ed] personal jurisdiction..." *Ibid.* Leytham then served interrogatories and requests for production on DBI. *Ibid.* In reply, DBI argued that



a response to the discovery was not required because simply allowing a product to be placed into the stream of commerce was insufficient to subject an entity to jurisdiction in Alabama in light of *Ex Parte Alloy Wheels*. *Id.* at 903. The Court concluded that, without the completion of further discovery, it could not satisfactorily address the issue of personal jurisdiction. *Id.* at 911-12. After the parties completed discovery and the trial court denied DBI's second motion to dismiss, DBI filed a second petition for a writ of mandamus. *Ex parte DBI, Inc.* [Ms. 1071433] \_\_\_ So.3d \_\_\_ (Ala. May 1, 2009). In determining whether the trial court was correct in exercising personal jurisdiction over DBI, the Supreme Court of Alabama overruled *Alloy Wheels*: "Until more definite direction is given, we revert to the last expressions from the United States Supreme Court in *World-Wide Volkswagen* and *Burger King* that are not hampered by the lack of a majority." *Id.* at \*31. Returning to the traditional "Stream of Commerce Test" of *World-Wide Volkswagen*, the Court held that "DBI purposefully availed itself of the privilege of doing business in the Alabama market so that exercising jurisdiction over it would not offend the requirements of due process." *Id.* at \*43. Accordingly, it denied DBI's petition for a writ of mandamus. *Id.* at \*52.

## Conclusion

For many years, the test of personal jurisdiction in Alabama was consistent with the United States Supreme Court's holding in *World-Wide Volkswagen*, that foreseeability and the act of placing the product into the stream of commerce are sufficient for a state court to exercise personal jurisdiction over a foreign defendant. However, the Supreme Court of Alabama's opinion in *McInnis* went astray and led to adoption of the "Stream of Commerce 'Plus' Test" in *Ex parte Alloy Wheels*. The evidentiary burden of that test was unfair and virtually impossible to ever prove in the context of foreign product manufacturers. It conflicted with both the letter and spirit of Alabama's long-arm rule and with the last clear word from the United States Supreme Court in *World-Wide*

*Volkswagen*. It was not until *Ex Parte DBI, Inc.*, that the Supreme Court of Alabama returned to the pure "Stream of Commerce Test" for personal jurisdiction and pronounced that indirect efforts to serve the forum suffice to establish personal jurisdiction.

## Discovery Recommendations for Alabama Plaintiffs

A court's analysis of the issue of personal jurisdiction over a defendant is on a case-by-case basis. *Sudduth v. Howard*, 646 So.2d 664, 667 (Ala. 1994). Most disputes bearing on the question of jurisdiction can be resolved through effective discovery. Consider using the following interrogatories when personal jurisdiction over a foreign product manufacturer is at issue:

### Sample Interrogatories

1. Has [defendant] been sued in any state or federal court in the United States for alleged defects in the design, manufacture, or adequacy of warnings of any of its [product]? If so:
  - a. Produce a true and correct list of all such suits and provide the style, court, docket number, and the names and addresses of plaintiffs' and defendants' attorneys;
  - b. Describe the nature of the allegations and the model [product] complained of; or, in the alternative, attach a copy of each plaintiff's complaint in each action, as last amended;
  - c. State the result of each such action, e.g., judgment for plaintiff(s), judgment for defendant(s), or other disposition.
2. Did [defendant] contest personal jurisdiction in any of the suits identified in response to Interrogatory Number 1? If so:
  - a. Produce a true and correct copy of each such motion to dismiss or other legal document whereby personal jurisdiction was contested;
  - b. Produce a true and correct copy of any plaintiff's opposition to the motion to dismiss or other document concerning personal jurisdiction;
  - c. Produce a true and correct copy of each court's opinion or order or other ruling on the motion to dismiss.
3. Has [defendant] at any time since [DATE] owned or controlled any subsidiary or other business entity in the United States? If so, state or produce:
  - a. The name, address, telephone number, web address, and E-mail address of any such present or former business entity;
  - b. The date and place of its origination or incorporation;
  - c. The nature of its present or former relationship with [defendant];
  - d. If it is or was publicly traded, state the stock exchange upon which its shares are or were traded;
  - e. If it is or was privately owned, state the names and addresses of its present and former owners;
  - f. State the name and address of each present and former member of its Board of Directors, showing the dates of service as a member of the Board;
  - g. State the name and address of each officer, showing the dates of service as such officer;
  - h. State the business purpose or function of each such entity, including the identities of products manufactured, distributed, or serviced
4. To the extent not answered or explained in response to Interrogatory Number 3, describe the relationship between [defendant] and \_\_\_\_\_, stating both company's respective corporate histories from their dates of origination.
  - a. Produce a true and correct list of \_\_\_\_\_'s and \_\_\_\_\_'s corporate officers for each year from [DATE] to the present;
  - b. Produce a true and correct list of \_\_\_\_\_'s and \_\_\_\_\_'s members of their respective Boards of Directors from [DATE] to present;
  - c. Produce a true and correct copy of the Articles of Association or Incorporation for \_\_\_\_\_ and \_\_\_\_\_;
  - d. Produce a true and correct copy of

# Establishing Personal Jurisdiction in Alabama



any corporate document establishing or memorializing that \_\_\_\_\_ is a wholly-owned subsidiary of \_\_\_\_\_.

5. Has [defendant] or any other wholly-owned subsidiary of [defendant] received any consumer complaints or incident reports from anywhere in the United States regarding any of its [product]? If so:

- a. Produce a true and correct copy of any such consumer complaints or incident reports and related documents;
- b. Produce a true and correct copy of any correspondence, letters, e-mails, or other documents reflecting any response of [defendant] or any wholly-owned subsidiary of [defendant] to any such consumer complaint or incident report.

6. Have [products] been the subject of any inquiry, investigation, case opening, or other proceeding by any federal, state, or private entity in the United States, including, without limitation, any federal or state agency, regulatory body, standards commission, certifying body, or any similar entity? If so:

- a. Give the name of the federal, state, or private agency, regulatory body, standards commission, certifying body, or other such entity that initiated any such inquiry, investigation, case opening, or proceeding;
- b. Produce a true and correct copy of all documents regarding the inquiry, investigation, case opening, or proceeding;
- c. Produce a true and correct copy of the transcript of any testimony given by witnesses during proceedings on any such inquiry, investigation, case opening, or proceeding;

7. Did [defendant] design its [product] to comply with any United States regulation, standard, or guideline, whether issued by a federal or state agency, regulatory body, standards commission, or other similar entity? If so:

- a. Name the federal or state agency, regulatory body, standards commission, or other entity;
- b. Name and cite the regulation, stan-

dard, or guideline;

- c. Produce a true and correct copy of any such regulation, standard, or guideline;
- d. Produce a true and correct copy of any certificate of compliance or any marking on any [product] stating that the [product] meets or complies with such regulation, standard, or guideline.

8. Has [defendant] or any wholly-owned subsidiary of [defendant] engaged or retained any business, individual, or other entity in the United States to analyze or test any [product] to determine whether it met United States standards, regulations, or guidelines?

If so:

- a. Describe all such testing for any occasion since [DATE];
- b. Produce true and correct copies of all correspondence, contracts, agreements, memoranda of understanding, and other such documents reflecting the engagement of testing companies, personnel, or other entities within the United States to analyze or test the [product];
- c. Produce true and correct copies of all analyses or testing and results from such analyses or testing companies or personnel.

9. State by year for the years [DATE] to present the total number of [product] manufactured by [defendant] for distribution in the United States.

10. For all sales identified in response to the previous interrogatory:

- a. Produce a list by year for each year since [DATE] to present of the names and addresses of wholesalers, retailers, and distributors to whom [defendant] delivered [product] for distribution or sale within the United States.
- b. Produce true and correct copies of all records of such deliveries to wholesalers, retailers, and/or distributors in the United States and records of all sales showing the numbers of sales of [product] per year;
- c. State the price ranges at which the

heaters were sold in each of those years.

11. Has [defendant] at any time since [DATE] indemnified or agreed to indemnify any entity, including wholesalers, retailers, or distributors, for liability for property damage, personal injury, or wrongful death arising out of alleged defects in [product]? If so:

- a. Identify the entity or entities that [defendant] has indemnified or agreed to indemnify and the years each such agreement existed;
- b. Produce a true and correct copy of each such indemnity agreements;
- c. Produce a true and correct copy of any document requesting indemnification by any such entity on any occasion since [DATE];
- d. Produce a true and correct copy of any negotiable instrument, warrant, check, or other record of payment of such indemnity on any occasion since [DATE];
- e. Produce a true and correct copy of any document containing any response of [defendant] to any such request for indemnity;
- f. Produce a true and correct copy of the opinion, order, or other ruling of any court in the United States, state or federal, on any dispute over a request for indemnification.

12. Has [defendant] at any time since [DATE] had liability insurance to cover risks attributable to alleged design, manufacturing, or warning defects of any of its products in the United States in general or in Alabama in particular? If so, produce a true and correct copy of all such insurance policies.

13. Produce a true and correct copy of all records reflecting shipment by [defendant] or by a wholly-owned subsidiary, to Alabama consumers of any replacement parts for [product] and of replacement product or component parts at any time since [DATE].

14. Has [defendant] at any time since [DATE] employed personnel for marketing and advertising in the United States? If so, state or produce the following:

# Establishing Personal Jurisdiction in Alabama



- a. The name and description of the division, group, or part of [defendant] that engaged in marketing or advertising for each year since [DATE];
  - b. The person or persons in charge of each division, group, or part of [defendant] that engaged in marketing or advertising for each year since [DATE];
  - c. True and correct copies of marketing or advertising plans or analyses that were presented to, reviewed, and/or approved by the head of the division, group, or part, any officer of [defendant] and/or any member of the Board of Directors of [defendant] for any year since [DATE];
  - d. True and correct copies of all documents reflecting money budgeted and/or expended by defendant for marketing and/or advertising in the United States each year since [DATE];
  - e. Attach true and correct copies of print, poster, photographic, or other media advertisements used to market or advertise [defendant]'s [product] in the United States at any time from [DATE] to present. For each such item produced, state the approximate date and location each item was used for marketing and/or advertising in the United States
15. Was there ever any decision made by [defendant], its Board of Directors, or any officer or employee not to market or advertise [product] in Alabama at any time since [DATE]? If so, state or produce:
- a. The identity of the person or persons who made such decision, the year any such decision was made, and the reasoning for such decision;
  - b. Produce true and correct copies of any documents reflecting or memorializing any decision not to market or advertise in Alabama.
16. Have any [defendant's] directors, officers, or employees ever traveled to Alabama for or on behalf of [defendant] at any time since [DATE]? If so, state or produce:
- a. The identity or identities of the director, officer, or employee of [defendant] who traveled to Alabama;
  - b. The reason each such director, officer, or employee traveled to Alabama;
  - c. The date or dates of travel to and from Alabama by each such director, officer, or employee;
  - d. True and correct copies of the sum of money budgeted or expended by any such director, officer, or employee for travel to or within Alabama at any time since [DATE].
17. Does [defendant] or any wholly-owned subsidiary of [defendant] have any contracts with any entities located in Alabama? If so, state or produce:
- a. A true and correct copy of all such contracts;
  - b. A true and correct copy of all prior contracts that now have expired;
  - c. The sums of money budgeted or expended to comply with the requirements of any such contract.
18. Does [defendant] or any wholly-owned subsidiary of [defendant] own any assets in Alabama? If so, state or produce the following:
- a. True and correct copies of all deeds, mortgages, bills of sale, bills of lading, or other documents that evidence ownership of any assets in Alabama;
  - b. State whether any assets were previously owned by [defendant] or any wholly-owned subsidiary of [defendant] in Alabama previously? If so, state or produce:
    1. A complete description of all such assets;
    2. True and correct copies of any deeds, mortgages, warrants, bills of sale, or other documents indicating an ownership interest in any such assets.
19. Has [defendant] or any wholly-owned subsidiary of [defendant] ever qualified at any time since [DATE] to do business in any state in the United States? If so, state or produce the following:
- a. True and correct copies of each statement by the Secretary of State of each applicable state evidencing or documenting that [defendant] or its wholly-owned subsidiary qualified to do business in such state.
20. Does [defendant] or any wholly-owned subsidiary of [defendant] maintain a website on the worldwide web? If so, state or produce:
- a. The correct URL address for any such website;
  - b. Its purpose;
  - c. Is any such website accessible to consumers throughout the United States, including Alabama?
  - d. Has [defendant] or any wholly-owned subsidiary of [defendant] taken any steps or made any decisions to prevent access to its website by people in
  - e. Does [defendant] or any wholly-owned subsidiary of [defendant] own a website that communicates in a language other than English? If so, state or produce:
    1. The correct URL address on the worldwide web for each such webpage;
    2. The language or languages of each such webpage;
    3. Its purpose;
    4. The approximate date of each such webpage when it first went online.
21. Does [defendant] or any of its wholly-owned subsidiaries accept communications from the United States by E-mail? If so, state or produce:
- a. The name of the person most familiar with [defendant's] and that of its wholly-owned subsidiary's information technology systems, including its servers, E-mail traffic, and personnel who have the duties or responsibilities of communicating in the English language with citizens of the United States by E-mail.
22. When [defendant's] [product] are sold in the United States, are they accompanied by installation, assembly, service, user instructions, or manuals in the English language? If so, state and produce:
- a. True and correct copies of all installation, assembly, service, user

# Establishing Personal Jurisdiction in Alabama

instructions, and manuals delivered to consumers with [product] at any time since [DATE];

- b. For each such installation, assembly, service, user instruction, or manual produced in response to Number 22a. above, state the approximate date each such document was used in the United States.

23. Has [defendant] or any wholly-owned subsidiary of [defendant] at any time since [DATE] sold or distributed [product] in the United States with any indication that the [product] or any of its component parts were "UL listed" or "UL approved"? If so, state or produce:

- a. True and correct copies of each statement, drawing, sticker, or label for each [product] showing the approximate date each such item was affixed to the product or component part.

24. Has [defendant] or any of its wholly-owned subsidiaries ever employed any consultant or expert in the United States with respect to any evaluation of the possible causes of a fire, electrical arcing, or burn injury allegedly attributable to a [product]? If so, state or produce:

- a. The name, address, firm, and position of any such consultant or expert in the United States with whom [defendant] or any wholly-owned subsidiary consulted;
- b. The complaint, incident, lawsuit, or other matter that the consultant or expert in the United States was retained about, stating specifically:
1. The date of the incident;
  2. The nature of the complaint or injury;
  3. The identity of the person or persons who made the complaint, submitted the incident report, or filed the lawsuit;
  4. Attach a true and correct copy of any written report or analysis prepared by any such consultant or expert in the United States.


25. Has [defendant] or any wholly-owned subsidiary at any time since [DATE] maintained any location in the United States for American users or consumers of [defendant's][product] to contact or communicate with concerning warranty claims or concerns about defects attributable to design, manufacturing, or inadequacy of warnings? If so, state or produce:

- a. The name, address, and telephone

number of any such location for each year it was in existence since [DATE];

- b. The name, address, and job title of the person or persons most familiar with the receipt since [DATE] by [defendant] and any of its wholly-owned subsidiaries of warranty claims or consumer complaints at said location(s).

26. Has [defendant] or any wholly-owned subsidiary of [defendant] at any time since [DATE] retained attorneys in the United States for any purpose? If so, state or produce:

- a. The name, address, telephone number, E-mail address, and other contact information for each attorney and/or law firm retained, listing the approximate year(s) for which each such attorney or law firm was retained, and the name of the entity by whom such attorney(s) or law firm(s) was or were retained. 

1 Note, too, that personal jurisdiction over a nonresident defendant may either be general or specific. *Helicopteros Nacionales de Colombia, S.A., v. Hall*, 466 U.S. 408 (1984). General jurisdiction applies where a defendant's activities in the forum state are "substantial" or "continuous and systematic," regardless of whether those activities give rise to the lawsuit. *Id.* A court has specific jurisdiction when a defendant has had few contacts with the forum state, but those contacts give rise to the lawsuit. *Id.*

*"The author would like to recognize Ms. Sady Duffner for her valuable assistance in preparing this article for publication."*



**David G. Wirtes, Jr.** is a member of Cunningham Bounds, LLC. He is responsible for legal research, motion practice, and appeals.

Mr. Wirtes is a Sustaining Member of the Alabama Association for Justice and has served in numerous capacities, including as Member, Executive Committee (1997-present); Board of Governors (1992-96); Co-editor, the *Alabama Association for Justice Journal* (1996-present); Member, *Amicus Curiae* Committee (1990-present); and Chairman (1997-2005).

Mr. Wirtes is active in numerous other professional organizations. He is a member of the Mobile County Bar Association and has served on many of its committees, including as Chairman, Ethics Committee; Chairman, Bench and Bar Conference Committee; Co-chairman, Alternative Dispute Resolution Committee; Member, Grievance Committee. He is a member of the Alabama State Bar Association (1985-present), and has served on its Ethics Committee and its Long-Range Planning Committee. He is also a member of the Alabama Supreme Court's Standing Committee on the Rules of Appellate Procedure.

Mr. Wirtes is also actively involved with the American Association for Justice (formerly Association of Trial Lawyers of America), where he has served as Sustaining Member; Member, *Amicus Curiae* Committee (1999-present); Member, Board of Governors (2002-2004); Alabama Delegate (1999-2001); and ATLA PAC Eagle.

Mr. Wirtes is a Fellow of the Litigation Counsel of America ("LCA"), the first President of LCA's Order of Certus (an honorary society of appellate specialists), a Sustaining Fellow of the Roscoe Pound Institute, and a Sustaining Member and the former Alabama Representative for Public Justice.

Mr. Wirtes is a frequent lecturer at Continuing Legal Education seminars, and has spoken on such topics as Defeating Unlawful Discrimination in Jury Selection, Appellate Practice, Perfecting the Appeal, HIPAA and *Ex parte* Contacts, Recent Updates on the Law, Electronic Discovery, Arbitration, and Immunity.