10-1979

World-Wide Volkswagen Corp. v. Woodson

Lewis F. Powell Jr.

ea 2-3-79

Run is similar to but not identical to my Lee-Ha case

Discuss

I could Grant

Petr and wholesale distributor and local dealer for Audi Fox autos in N.C. They sold an Audi to Robinson, then a resident of N.C.

Robinson, on a trip to Okla, had an accident in which gas tank ruptured - causing fire & injuries

He sued in Okla, claiming jurisdiction under long arm statute, & on products liability theory.

Petr sought writ of prohibition to prevent judge from exercising personal jurisdiction.

PRELIMINARY MEMORANDUM

February 16, 1979 Conference
List 7, Sheet 4

No. 78-1078 CSX

Cert to S.Ct. Okla. (Barnes, Hodges, Lavender, Williams, Doolin; Berry, Simms concur; Irwin concurs in part)

WORLD-WIDE VOLKSWAGEN CORP.

v.

WOODSON (judge) State/Civil Timely

1. SUMMARY. Petr corporations argue that a writ of prohibition to prevent respondent judge from exercising in personam jurisidiction over them should have been granted.

Please see p. 8.

2. FACTS AND PROCEEDINGS BELOW. Petrs are an automobile dealership doing business in Massena, New York, and an automobile distributor doing wholesale business in New York, New Jersey, and Connecticut. An Audi automobile was sold by the distributor to the dealer, and by the dealer to Mr. and Mrs. Robinson in New York, the residence of the Robinson family. Nine months later, the Robinsons were involved in an auto accident while travelling through Oklahoma on an interstate highway. The gas tank ruptured, causing a fire, and several members of the family suffered serious injuries.

A products liability action was brought against petrs and two other corporations in Okla that have not challenged jurisdiction (the importer of the car and its German manufacturer). Petrs entered a special appearance, contesting in personam jurisdiction over them. They argued that the miminum contacts required by the Due Process Clause as interpreted in International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), were absent. The state trial court ruled that it had jurisdiction under the state long-arm statute, and denied petrs' motion to dismiss.

Petrs sought a writ of prohibition from the state supreme court. That court, interpreting the long-arm statute as extending as far as permitted by the Constitution, concluded that jurisdiction was proper under the provision that states:

> "A court may exercise personal jurisdiction over a person . . . as to a cause of action or

> claim for relief arising from the person's . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state . . .."

The court reasoned that because of the very nature of the automobile sold to the Robinsons, petrs "can foresee its possible use in Oklahoma. . . . The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma." In light of these facts, the court concluded that personal jurisdiction over petrs was appropriate. The concurring justices apparently did not write. This petn for cert followed.

3. CONTENTIONS. Petrs arque that jurisdiction is proper only if they in some way have availed themselves of the privilege of conducting business in Oklahoma or otherwise have benefitted or been protected by its laws. They claim that they have absolutely no commercial contacts with that state: they do not advertise there, sell to anyone in Oklahoma, or have any business relationships with anyone in the state. They claim that the state supreme court's "foreseeablility test" will allow in personam jurisdiction over any seller of an object that

happens to be taken to any other state in the Union by the voluntary, unilateral act of the purchaser. Given the mobile natue of our society, they say, such an occurrence is always to be anticipated, but the exercise of personal jurisdiction is not necessarily fair for that reason alone. As long as a seller makes no efforts whatsoever to reach the market within another state, petrs contend that he lacks the minimum contacts with that jurisidiction necessary to satisfy the test of International Shoe.

Petr cite decisions from the Supreme Courts of four states that have found minimum contacts lacking in circumstances very similar to those in this case. Pellegrin v. Sachs & Sons, 522 P.2d 704 (Utah 1974); Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972); Tilley v. Keller Truck & Implement Corp., 200 Kan. 641, 438 P.2d 128 (1968); Oliver v. American Motors Corp., 70 Wash. 2d 875, 425 P.2d 647 (1967). Petrs argue that the presence of this conflict, and the inevitability that the question will recur, requires this Court to clarify the issue.

Resps answer, first, that the case is moot because petrs have entered a general appearance. They claim that petrs contested not only in personam jurisdiction, but also subject matter jurisdiction, and under local law the mere raising of such a claim implies that a general appearance has been made.

Resps then argue that the decision below is correct on the merits. They emphasize the trend towards extending the

permissible length of state long-arm statutes, and they cite to cases, mostly decided in state courts, that permit jurisdiction over a seller or manufacturer in the state where his product eventually causes an injury. The most factually similar decision cited by resps is Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205 (D.N.J. 1974), a diversity action in which a Wisconsin auto dealer was subject to jurisdiction in New Jersey on a claim that a defective jack included with an automobile sold in Wisconsin to a resident of that state had caused injuries after the plaintiff-purshaser moved to New Jersey. Cert. was denied in some of the cases cited by resps, although in none with similar facts.

Resps argue that, given the fact that automobiles are designed for the very purpose of travelling long distances, it should make no difference whether the car was in Oklahoma because the Robinsons took it there rather than because shipped there by petrs through the channels of commerce. In the latter situation, resps say, jurisdiction clearly would be proper. In either case, petrs reasonably could anticipate the use of their product in that state and in fact derive financial benefit from its presence there.

Resps argue, finally, that Oklahoma is the most convenient place for the lawsuit (apparently the Robinsons were moving from New York when the accident occurred, although they were still New York residents at that time), and that the Robinsons will suffer great hardship if forced to litigate in

New York: two actions would then be necessary since the defendants other than petrs are ready to proceed on the merits in Oklahoma.

4. DISCUSSION. Resps' mootness argument is unsound. From the papers it appears that petrs contested only the venue over the subject matter, not subject matter jurisdiction. Given the light emphasis resps give this point, I suspect even they do not take it seriously.

On the merits, two issues are involved: whether jurisdiction is proper under the state statute, and whether it is permissible under the Constitution. Although the state supreme court's resolution of the first question is not unimpeachable, this is purely a question of state law.

With respect to the constitutional question, as is so often true in "minimum contacts" cases, the question here is a close one, and necessarily a judgment call. The state supreme court did not rule as broadly as petrs suggest; it did not say that jurisdiction was proper merely because the car happened to be in Oklahoma, but focused on its belief that petrs' customers, using their cars for their intended purpose, predictably make significant use of Oklahoma highways. The court thus found a contact more extensive than the Robinson family's presence in the state on the day of the accident. The importance of this fact is not entirely clear from the court's opinion: apparently it believed that petrs benefit economically from the very presence of these highways, since their customers will purchase

automobiles in order to travel on them.

Although petrs have a point that the contacts here were very thin, this Court seems to have given considerable weight to economic, as opposed to other kinds of contacts. Thus in Kulko v. Superior Court, 436 U.S. 84 (1978), decided last Term, a case in which minimum contacts were not found, the Court stressed the non-economic nature of the defendant's connection with the forum state. See id., at 96-97. Petrs' connection with Oklahoma, by contrast, was purely commercial. Viewed from this perspective, the decision below is not particularly disturbing.

On the other hand, where the defendant is merely a local dealer, as opposed to a manufacturer, he perhaps has no reason to believe that any, or at least very many, of his cars will end up in some distant state. Moreover, the reasoning of the court below that petrs enjoyed financial benefit from the fact the some of the cars they sell are driven in Oklahoma is not self-evidently correct. At least as to the petr dealer, then, and perhaps as to both petrs, asserting jurisdiction in Oklahoma arguably is fundamentally unfair. If these petrs have minimum contacts, the same might be true of the retailer of any part or tool connected with an automobile that malfunctions somewhere across the continent.

I tend to agree with petrs that the issue is an important one, given the extent of interstate automobile travel, the frequency of accidents, and the significance of products liability suits. And the four cases cited as in conflict with

this one are both highly similar on their facts and directly opposite in their conclusions. The rationale of Reilly, by contrast, is closely akin to that of the court below. This is a problem that will not leave the federal courts untouched, at least not until the diversity jurisdiction is limited. For these reasons, the Court may wish to grant this petn.

Another case currently before the Court involving the minimum contacts problem in a somewhat different aspect is Rush and State Farm Mut. Auto. Ins. Co. v. Savchuk, No. 78-952, on List 3, Sheet 1, for the February 16, 1979 Conference.

There is a response.

2-3-79 Andersen op. in petn.

Rush involves the same issue as Lee-Hy pending, in which you dissented from the denial of cert. You may be interested in a ground rule, although the issue is slightly different than that in Rush and Lee-Hy.

Yes

L.F.P.

February 16, 1979

Court .... Voted on.................., 19..

Argued ...., 19... Assigned ...., 19... No. 78-1078

Submitted ...., 19... Announced ...., 19...

WORLD-WIDE VOLKSWAGEN

vs.

WOODSON

[crossed out] The CJ observed that under Rush case Coca Cola Co. can be sued anywhere in World. CJ would grant + reverse. P.S. doubts over juris because case has not been heard. Beyond, however, thinks we do have juris.

Grant + set in tandem with 78-952 Rush

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	POST	DIS	AFF	MERITS REV	AFF	MOTION G	D	ABSENT	NOT VOTING
Burger, Ch. J.		✓											
Brennan, J.			✓										
Stewart, J.				Pass									
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.		✓											
Powell, J.		✓											
Rehnquist, J.		✓											
Stevens, J.		✓											

SUPREME COURT OF THE UNITED STATES

LEE-HY PAVING CORP. AND DAVIS E. CLEM *v.* MARGUERITE T. O'CONNOR, ETC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 78-419. Decided December 4, 1978

The petition for a writ of certiorari is denied.

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, dissenting.

This case presents the question whether the Due Process Clause permits a tort plaintiff to obtain jurisdiction in New York over a defendant whose sole contact with the State arises from the defendant's contract for indemnity with a company that does business in New York.[1] The case presents an issue of considerable importance, with troublesome ramifications in the spacious arena of personal injury litigation. Moreover, it seems to me that the rationale of our recent decision in *Shaffer* v. *Heitner*, 433 U. S. 186 (1977), is at odds with the decision of the Court of Appeals here. I therefore would grant certiorari and set the case for argument.

The petitioners are residents of Virginia. While working for petitioner Lee-Hy Paving Corp. (Lee-Hy) in Virginia, the respondent's decedent (a New York resident) was killed when Lee-Hy's grader, operated by petitioner Clem, struck

---

[1] Along with *Lee-Hy Paving Corp.* v. *O'Connor*, the Court of Appeals decided two other cases with respect to which certiorari is sought: *Gillespie* v. *Schwartz*, No. 78-268, and *Boston Hospital for Women* v. *Schwartz*, No. 78-502. In each of these cases, residents of other States were sued in New York for torts occurring outside of New York. The sole basis for jurisdiction in each is the insurance policy of the defendant, issued by a company doing business in New York. Although I write only with respect to *Lee-Hy Paving Corp.* v. *O'Connor*, the reasons stated in my opinion here would support the granting of certiorari in all three cases.

him near Richmond, Va. The respondent instituted this suit in the District Court for the Eastern District of New York as executrix for her husband's estate, claiming damages for the wrongful death of her husband. In order to obtain jurisdiction over the petitioners, who are conceded to have no other connection to New York, the respondent sought and obtained under New York law an order attaching the contractual obligations of two insurance companies doing business in New York to defend and indemnify Lee-Hy. The District Court denied petitioner's motion to vacate the attachment and dismiss the suit. Acknowledging that there was a "substantial ground for difference of opinion" on the question of law, and that the issue was an important one, the District Court certified an appeal to the Court of Appeals under 28 U. S. C. § 1292 (b).

The Second Circuit affirmed. The court based its ruling on the theory of *quasi in rem* jurisdiction adopted by the New York Court of Appeals in *Seider* v. *Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966). In *Seider*, personal jurisdiction was predicated on the fiction that the insurance company's obligation to indemnify the policyholder was a "debt" that the plaintiff in a negligence suit could attach as a "res." In *Minichiello* v. *Rosenberg*, 410 F. 2d 106 (1968), the Second Circuit affirmed the constitutionality of *Seider* jurisdiction, reasoning that the New York Court of Appeals had created judicially a direct action law similar to the Louisiana statute held constitutional in *Watson* v. *Employers Liability Assurance Corp.*, 348 U. S. 66 (1954). The *Minichiello* court recognized that the *Seider* doctrine differed in one important respect from the Louisiana direct action statute of *Watson*: Under *Seider*, there was no requirement that the tort for which redress was sought had occurred in the State asserting jurisdiction. Despite the Court's emphasis in *Watson* on the location of the tort, the Second Circuit in *Minichiello* ruled that New York's interest in protecting its residents and providing them with a ready means of suing foreign tortfeasors

Seider departed from Watson. In Seider the tort occurred in the State asserting jurisdiction.

was sufficient to justify *Seider* jurisdiction under the Due Process Clause.[7]

In the case at bar, the petitioners unsuccessfully urged reconsideration of *Minichiello* on the ground that the *Seider* doctrine had been undermined by *Shaffer* v. *Heitner*, *supra*. The Court of Appeals viewed the "overriding teaching of *Shaffer*" as requiring courts to look to the "realities" of the asserted grounds for jurisdiction. As far as the insurance companies were concerned, the court found no unfairness in their being subject to the jurisdiction of New York courts, as they do business in New York. The court thought that this was true even though often it is more expensive (and therefore more costly to insurers) to defend a lawsuit brought several hundred miles from the site of the accident, the residence of the defendants, and the location of the witnesses. The court reached a similar conclusion concerning the fairness of a suit brought in New York against "the nominal defendants" (the petitioners here). The court thought it ironical that they should complain even though they "will not pay the judgment nor manage the defense."[8]

I find the Court of Appeals decision disturbing. Although the insurance companies' contact with New York is important in determining whether it is fair for the New York courts to assert their jurisdiction, our decision in *Watson* indicated that the difficulties of defending a negligence case far from the place of the injury should be taken into account under the Due Process Clause. See *Watson* v. *Employers Liability*

---

[7] In his persuasive dissent in *Minichiello*, Judge Anderson argued that *Watson* was based primarily on a State's strong interest in having jurisdiction with respect to actions arising within the State's borders. See *Minichiello*, 410 F. 2d, at [illegible]. Thus, Judge Anderson concluded that "statutes asserting jurisdiction of the state where the accident occurred qualify as due process, which is the assertion of jurisdiction by the state of the plaintiff's residence does not." *Id.*, at 118 (footnote omitted).

[8] The court did note that "no other state could constitutionally give collateral estoppel effect to a *Seider* judgment." Although I agree that no such effect should be allowed, the court's opinion in this regard is dictum that may or may not be followed in other jurisdictions.

Watson
defending
neg. suit
away from
state of tort

view the scene jurors familiar with location

Assurance Corp., 348 U. S., at 72. Often these difficulties are substantial. It is routine procedure for the judge and jury[1] to view the scene of the accident, often more than once. Jurors drawn from the venue of the accident may be better able to understand testimony pertaining to local conditions and geography. In short, many of the factors traditionally considered under the doctrine of *forum non conveniens*—itself a doctrine based on fairness—may also pertain to the fairness of a court hundreds of miles from the location of an accident exercising its jurisdiction over the parties to the resulting tort suit.[2]

Moreover, the Court of Appeals' reference to the petitioners as "nominal defendants" disregards many of the "realities" that bear upon whether an alleged tortfeasor, sued in a jurisdiction remote from his home and the location of the accident, is denied the fairness required by the Due Process Clause. It is novel doctrine, at least for me, to refer to the interest of defendants to negligence actions as "nominal" merely because they have insurance. In this case, for example, petitioners will be summoned to appear in a court in New York, and will be required to participate in the defense of the suit in essentially the same manner as if it had been brought in Virginia. They are required to do this 300 miles from their residences and place of business, confronted with all of the uncertainties caused by delays that often stretch a trial over several days or even weeks.

Burdens imposed are often more resident insurance co.

In addition to the problems posed for both the insurer and the insured by a litigation located hundreds of miles from the scene of the tort, there is the ever-present possibility of a second suit in the jurisdiction where the accident occurred. The opinion of the Court of Appeals seems to assume, by its reference to petitioners as nominal defendants, that the only real parties in interest are the insurance companies. To be sure, a judgment against the petitioners in the New York courts cannot exceed the amount of indemnification provided

Possibly of second suit — not nominal Ds

[1] See 5 Cleary, McCormick on Evidence § 216 (2d Ed. 1972).

[2] See *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 507–509 (1947).

under the insurance policies. But judgments for civil damages, especially in recent years, often have exceeded insured limits. In this case, for example, if respondent wins a judgment that exhausts the obligation of the insurers, the respondent will be free to sue petitioners in Virginia where they would be forced to go through a second trial—possibly without the benefit of lawyers supplied by the insurance companies. Moreover, as every litigation lawyer knows, the hazards of a second trial may exceed those of the first; witnesses seldom tell their story precisely the same way twice, and often, new evidence is introduced. To say that the legal rights of insured defendants are not being adjudicated, despite their substantial role in the defense of the suit and despite the potential loss of their right to the insurance company's legal representation, begs the question: To what extent must an individual be involved in the litigation before the fundamental fairness requirements of *International Shoe Co. v. Washington*, 326 U. S. 310 (1945), are applicable?

In sum, the judicially created *Seider* doctrine raises serious questions of due process. To me it does not appear consonant with the standards of fairness enunciated in *International Shoe v. Washington*, 326 U. S. 310 (1945), and strongly reiterated in *Shaffer v. Heitner*, *supra*. The issues presented are of concern to insurers and insureds in every State, as well as to state legislators responsible for the fairness of long-arm statutes. The case merits plenary consideration by this Court.

78-1078 <u>World-Wide Volkswagen v. Woodson</u> Cert to S/Ct Okla. Argued 10/1/79
(~~[illegible]~~)

Products Liability case

Resp. bought auto from Petrs - retailer of Volkswagen autos in N.Y. - where Resp. lived.

Some mo. later, in an accident in Okla., the gas tank ruptured. The fire caused injury.

Resp sued Petrs (N.Y. Retailer & Wholesale Distributor) and also the German Mfg & the N.Y. Importer. The latter two Δs have not challenged juris.

Resp. sought Writ of Prohibition vs. Judge to prevent his assuming personal juris.

In <u>Watson</u> this Ct. allowed juris in Okla vs non-resident Δs where <u>tort</u> occurred.

The <u>tort</u> here - defective mfg - occurred in Germany (certainly not Okla).

This is different from <u>Seider</u>, as no insurance etc was attached

The Q is whether <u>Int. Paper</u> & <u>Shaffer v Heitner</u> & <u>Kulko v Sup Ct</u> (Calif) support Petrs claim that ~~we~~ they have insufficient contacts in Okla to sustain juris.

As CJ said (at time of granting), if this case is affirmed the ~~Coca~~ Coca Cola Co can be sued anywhere.

Rubin (Petro)

Ct Okla hearing, Ps could produced no facts supporting juris. Burden was on Pltrs.

Rubin says there is no distinction between the two Petros.

Number of Ps had any connection with Okla - they were merely driving there.

Okla statutes [redacted] is helpful to Ds.

No act by Ds within state - no tort in Okla. No business done or advertising in state.

Int. Shoe - doctrine of "minimal contacts".

Rubin (Ps) rely on arguments of "reasonableness" & "fairness" rather than relying on the "contacts" rationale of Int. Shoe & Hoetmer.

Fact that Pltrs may go into other states should not be sufficient. Almost any commodity - e.g. wheat, etc - may end up in any state.

Rubin (cont.)

TPS noted that foreseeable alone is not enough. In this case it may not have been foreseeable that car would be ~~[illegible]~~ driven in Okla. – (no ev. to this effect), but this is immaterial

Responding to BRWs Q, Rubin says Hertz – since it is in business of ~~[illegible]~~ leasing cars for interstate use – would be liable.

Green (Resp)

First case to present this issue to this Court.

P.S. observed that every product, almost, is ~~[illegible]~~ mobile. Even a toothbrush can go anywhere with its owner.

Green answers that ~~[illegible]~~ auto is a dangerous product & this distinguishes it from other products. (what about chain-saw, lawn-mower?).

Purpose of auto is to travel.

Greer (cont.)

State's interest is important factor. Here state interest in protecting people who travel thru it. (But a state would have then as to any product or commodity that moves thru state)

→ As JPS noted, if a filling station in Ohio ~~[illegible]~~ fixes a tire on a car that goes on to Alaska & there causes an accident, there would be "foreseeability" & juris in Alaska.

No facts support statement of Ohio Ct on p 6 a of Pet.

Reverse 6-3

78-1078 World-Wide Volkswagen v. Woodson Conf. 10/3/79

The Chief Justice Passed. On second vote, I'd reverse
Okla is most convenient forum but Q is what
Const sequence as to where a D may be sued.

Mr. Justice Brennan Affirm
Autos go everywhere. But should not
decide case on basis of foreseeability alone.
In determining "contacts" must give
some weight to mobility of auto.
Here the accident was caused by defective
part that may have been added by dealer.
Okla has interest in all autos that pass
thru state. This is apparent
(WJB did not mention Int. Shoe or Hoffman.)

Mr. Justice Stewart Reverse
Wholly disagree with WJB. Here practice DS
- dealer + distributor - had no contacts in Okla.
Under Int. Shoe & Hoffman tests it was a
denial of D/P

~~Ford~~
Okla's decision would apply to any & all
products + commodities if "foreseeability" that
they may end up in some other state.
Manufacturer was def. & advertised in Okla

Mr. Justice White *Reverse*

If we affirmed this case, all states would have juries. We would probably have "national juries"

Mr. Justice Marshall *Affirm*

Agree with W J B

Mr. Justice Blackmun *Affirm*

Not at rest.

"Just reaction" is to follow P.S. & B R W. But fact that accident occurred in Ohio is imp. — perhaps controlling. Don't rely on foreseeability — but would try to limit case to motor vehicles

Mr. Justice Powell Reverse

For reasons stated by
P.S., and B.R.W.

Mr. Justice Rehnquist Reverse

Analytically Nat Q is whether the Okla judg can be enforced in another state. But nevertheless we can decide case on D/P grounds

The distributor & dealer had no sig. contacts in Okla

Mr. Justice Stevens Reverse

If judg. were rendered in Hong Kong, it would have to be enforced in U.S. under the Okla Ct. decision

Good opinion
I'd

Reviewed 11/15/79
for CFP
Join

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 15 NOV 1979

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1078

World-Wide Volkswagen Corporation et al., Petitioners, v. Charles S. Woodson, District Judge of Creek County, Oklahoma, et al.

On Writ of Certiorari to the Supreme Court of Oklahoma.

[November —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue before us is whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise *in personam* jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident there.

I

Respondents Harry and Kay Robinson purchased a new Audi automobile from petitioner Seaway Volkswagen, Inc. (Seaway) in Massena, N. Y., in 1976. The following year the Robinson family, who resided in New York, left that State for a new home in Arizona. As they passed through the State of Oklahoma, another car struck their Audi in the rear, causing a fire which severely burned Kay Robinson and her two children.[1]

The Robinsons[2] subsequently brought a products liability

[1] The driver of the other automobile does not figure in the present litigation.

[2] Kay Robinson sued on her own behalf. The two children sued through Harry Robinson, their father and next friend.

Mr Justice.

This opinion does a good job of tackling the line-drawing difficulties of applying "minimum contacts." Purposeful activity, or the foreseeability of being haled into court by selling to consumers in a state is enough; foreseeability of mere use in a state is not. 10-11.

On 5-8, the opinion deals w/ "inconvenience" factors and say that jurisdiction may not be established even if a state is the most convenient forum. I believe this is generally consistent with your views. I would await a dissent + then circulate a Rule concurrence that could cite the Ct's discussion of inconvenience here.

action in the District Court for Creek County, Okla., claiming that their injuries resulted from defective design and placement of the Audi's gas tank and fuel system. They joined as defendants the automobile's manufacturer, Audi NSU Auto Union Aktiengesellschaft (Audi); its importer Volkswagen of America, Inc. (Volkswagen); its regional distributor, petitioner World-Wide Volkswagen Corporation (World-Wide); and its retail dealer, petitioner Seaway. Seaway and World-Wide entered special appearances,[1] claiming that Oklahoma's exercise of jurisdiction over them would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.[2]

The facts presented to the District Court showed that World-Wide is incorporated and has its business office in New York. It distributes vehicles, parts and accessories under contract with Volkswagen, to retail dealers in New York, New Jersey, and Connecticut. Seaway, one of these retail dealers, is incorporated and has its place of business in New York. Insofar as the record reveals, Seaway and World-Wide are fully independent corporations whose relations with each other and with Volkswagen and Audi are contractual only. Respondents adduced no evidence that either World-Wide or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, Tr. of Oral Arg. 32, there was no showing that any automobile sold by World-Wide or Seaway has ever

[1] Volkswagen also entered a special appearance in the District Court, but unlike World-Wide and Seaway did not seek review in the Supreme Court of Oklahoma and is not a petitioner here. Both Volkswagen and Audi remain as defendants in the litigation pending before the District Court in Oklahoma.

[2] The papers filed by the petitioners also claimed that the District Court lacked "venue of the subject matter," App. 9, or "venue over the subject matter." App. 11.

entered Oklahoma with the single exception of the vehicle involved in the present case.

Despite the apparent paucity of contacts between petitioners and Oklahoma, the District Court rejected their constitutional claim and reaffirmed that ruling in denying petitioners' motion for reconsideration.[5] Petitioners then sought a writ of prohibition in the Supreme Court of Oklahoma to restrain the District Judge, respondent Charles S. Woodson, from exercising *in personam* jurisdiction over them. They renewed their contention that because they had no "minimal contacts," App. 32, with the State of Oklahoma, the actions of the District Judge were in violation of their rights under the Due Process Clause.

The Supreme Court of Oklahoma denied the writ, 585 P. 2d 351 (1978),[6] holding that personal jurisdiction over petitioners was authorized by Oklahoma's "long-arm" statute, Okla. Stat., Tit. 12, § 1701.03 (a)(4) (1961).[7] Although the court noted that the proper approach was to test jurisdiction against both statutory and constitutional standards, its analysis did not distinguish these questions, probably because

[5] The District Court's rulings are unreported, and appear at App. 13 and App. 29.

[6] Five judges joined in the opinion. Two concurred in the result, without opinion, and one concurred in part and dissented in part, also without opinion.

[7] This subsection provides:

"A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state . . . ."

The State Supreme Court rejected jurisdiction based on § 1701.03 (a)(3), which authorizes jurisdiction over any person "causing tortious injury in this state by an act or omission in this state." Something more than the infliction of tortious injury was required.

§ 1701.03 (a)(4) has been interpreted as conferring jurisdiction to the limits permitted by the United States Constitution.[4] The Court's rationale was contained in the following paragraph, 585 P. 2d, at 354:

> "In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor, who has the exclusive right to distribute such automobile [*sic*] in New York, New Jersey and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding that the petitioners derive substantial revenue from goods used or consumed in this State."

We granted certiorari, 440 U. S. 907 (1979), to consider an important question of state court jurisdiction and to resolve a conflict between the Supreme Court of Oklahoma and the highest courts of at least four other States.[5] We reverse.

II

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal

---

[4] *Fields* v. *Volkswagen of America, Inc.*, 555 P. 2d 48 (Okla. 1976); *Carmack* v. *Chemical Bank New York Trust Co.*, 536 P. 2d 897 (Okla. 1975); *Hines* v. *Clendenning*, 465 P. 2d 460 (Okla. 1970).

[5] Compare *Tilley* v. *Keller Truck & Implement Corp.*, 200 Kan. 641, 438 P. 2d 128 (1968); *Granite States Volkswagen, Inc.* v. *District Court*, 177 Colo. 42, 492 P. 2d 624 (1972); *Pellegrini* v. *Sachs & Sons*, 522 P. 2d 704 (Utah 1974); *Oliver* v. *American Motors Corp.*, 70 Wash. 2d 875, 425 P. 2d 647 (1967).

judgment against a nonresident defendant. *Kulko v. Superior Court*, 436 U. S. 84, 91 (1978). A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. *Pennoyer v. Neff*, 95 U. S. 714, 732–733 (1878). Due process requires that the defendant be given adequate notice of the suit, *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 313–314 (1950), and be subject to the personal jurisdiction of the court, *International Shoe Co. v. Washington*, 326 U. S. 310 (1945). In the present case, it is not contended that notice was inadequate; the only question is whether these particular petitioners were subject to the jurisdiction of the Oklahoma courts.

Only Q

As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. *International Shoe Co. v. Washington*, *supra*, at 316. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice'" *International Shoe Co. v. Washington*, *supra*, at 316 (quoting *Milliken v. Meyer*, 311 U. S. 457, 463 (1940)). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U. S., at 317. Implicit in this emphasis on reasonableness is the notion-

standing that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U. S. 220, 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. Superior Court*, *supra*, at 92, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U. S. 186, 211, n. 37 (1977); 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, see *Kulko v. Superior Court*, *supra*, at 93, 98.

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee v. International Life Ins. Co.*, *supra*, at 222–223, this trend is largely attributable to a fundamental transformation in the American economy:

> "Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern 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."

The historical developments noted in *McGee* of course, have only accelerated in the generation since that case was decided.

Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers.

In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are forbidden from acting as separable economic entities. *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U. S. 525, 538 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

Hence, even while abandoning the shibboleth that "[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established," *Pennoyer* v. *Neff*, *supra*, at 720, we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of government." *International Shoe Co.* v. *Washington*, *supra*, at 317, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws." *Id.*, at 319. As we noted in *Hanson* v. *Denckla*, 357 U. S. 235, 250–251 (1958):

> "As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer* v. *Neff*, 95 U. S. 714, to the flexible standard of *International Shoe Co.* v. *Washington*, 326 U. S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient

ient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

Thus, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe Co. v. Washington*, *supra*, at 319. Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment. *Hanson v. Denckla*, *supra*, at 251, 254.

III

Applying these principles to the case at hand,[11] we find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, re-

[11] Respondents argue, as a threshold matter, that petitioners waived any objections to personal jurisdiction by (1) joining with their special appearances a challenge to the District Court's subject-matter jurisdiction, see n. 1, *supra*, and (2) taking depositions on the merits of the case in Oklahoma. The trial court, however, characterized the appearances as "special," and the Oklahoma Supreme Court, rather than finding jurisdiction waived, reached and decided the statutory and constitutional questions. Cf. *Kulko v. Superior Court*, *supra*, at 91, n. 5.

respondents seek to base jurisdiction on one isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

It is argued, however, that because an automobile is mobile by its very design and purpose it was "foreseeable" that the Robinsons' Audi would cause injury in Oklahoma. Yet "foreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. In *Hanson v. Denckla*, *supra*, it was no doubt foreseeable that the settlor of a Delaware trust would subsequently move to Florida and seek to exercise a power of appointment there; yet we held that Florida courts could not constitutionally exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State. In *Kulko v. Superior Court*, *supra*, it was surely "foreseeable" that a divorced wife would move to California from New York, the domicile of the marriage, and that a minor daughter would live with the mother. Yet we held that California could not exercise jurisdiction in a child-support action over the former husband who had remained in New York.

foreseeability is not the criterion

If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, see *Erlanger Mills Inc. v. Cohoes Fibre Mills, Inc.*, 239 F. 2d 502, 507 (CA1 1956); a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey, *Ruffy v. Hall Tollco Products, Inc.*, 372 F. Supp. 1205 (NJ 1974); or a Florida soft drink concessionaire could be summoned to Alaska to account for injuries happening there, see *Upjohn v. Executive Aviation Services, Inc.*, 304 F. Supp. 165, 170–171 (Minn. 1969). Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel. We recently abandoned

the outworn rule of *Harris* v. *Balk*, 198 U. S. 215 (1905), that the interest of a creditor in a debt could be extinguished or otherwise affected by any State having transitory jurisdiction over the debtor. *Shaffer* v. *Heitner*, *supra*, 433 U. S. 186 (1977). Having interred the mechanical rule that a creditor's amenability to a *quasi in rem* action travels with his debtor, we are unwilling to endorse an analogous principle in the present case.[11]

This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. See *Kulko* v. *Superior Court*, *supra*, at 97-98; *Shaffer* v. *Heitner*, *supra*, at 216; and see *id.*, at 217-219 (STEVENS, J., concurring in the judgment). The Due Process Clause, by ensuring the "orderly administration of the laws," *International Shoe Co.* v. *Washington*, 326 U. S., at 319, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

But "foreseeability" is not irrelevant

When a corporation "purposefully avails itself of the privi-

---

[11] Respondents' counsel, at oral argument, see Tr. of Oral Arg. 19-22, 29, sought to limit the reach of the foreseeability standard by suggesting that there is something unique about automobiles. It is true that automobiles did play a crucial role in the expansion of personal jurisdiction through the fiction of implied consent, *e. g.*, *Hess* v. *Pawloski*, 274 U. S. 352 (1927), and some of the cases have treated the automobile as a "dangerous instrumentality." But today, under the regime of *International Shoe*, we see no difference for jurisdictional purposes between an automobile and any other chattel. The "dangerous instrumentality" concept apparently was never used to support personal jurisdiction; and to the extent it has relevance today it bears not on jurisdiction but on the possible desirability of imposing substantive principles of tort law such as strict liability.

lege of conducting activities within the forum State." *Hanson* v. *Denckla*, *supra*, at 253. It has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers or, if the risks are too great, severing its connection with the State. Hence, if a manufacturer or distributor such as Audi or Volkswagen serves or seeks 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 other States. Compare *Gray* v. *American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

But there is no such or similar basis for Oklahoma jurisdiction over World-Wide or Seaway in this case. Seaway's sales are made in Massena, N. Y. World-Wide's market, although substantially larger, is limited to dealers in New York, New Jersey and Connecticut. There is no evidence that any automobiles distributed by World-Wide are sold at retail customers outside this tri-State area. It is foreseeable that the purchasers of automobiles sold by World-Wide or Seaway may take them to Oklahoma. But the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson* v. *Denckla*, *supra*, at 253.

In a variant on the previous argument, it is contended that jurisdiction can be supported by the fact that petitioners expect substantial revenue from goods used in Oklahoma. The Oklahoma Supreme Court so found, 585 P. 2d, at 356–357, drawing the inference that because the automobile sold by petitioners had been used in Oklahoma others might have been used

them also. While this inference seems less than compelling on the facts of the instant case, we need not question the Court's factual findings in order to reject its reasoning.

This argument seems to make the point that the purchase of automobiles in New York, from which the petitioners earn substantial revenue, would not occur *but for* the fact that the automobiles are capable of use in distant States like Oklahoma. Respondents observe that the very purpose of an automobile is to travel, and that travel of automobiles sold by petitioners is facilitated by an extensive chain of Volkswagen service centers throughout the Country, including some in Oklahoma.[7] However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. See *Kulko* v. *Superior Court*, *supra*, at 94–95. In our view, whatever marginal economic petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

Because we find that petitioners have no "contacts, ties or relations" with the State of Oklahoma, *International Shoe Co.* v. *Washington*, *supra*, at 319, the judgment of the Supreme Court of Oklahoma is

Reversed.

---

[7] As we have noted, petitioners earn no direct revenue from these activities. See *supra*, at —

November 16, 1979

78-1078 World-Wide Volkswagen v. Woodson

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 16, 1979

Re: 78-1078 - World-Wide Volkswagen Corp. v. Woodson

Dear Byron:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 19, 1979

RE: No. 78-1078 World-Wide Volkswagen Corporation v. Charles S. Woodson

Dear Byron:

I'll circulate a dissent in the above in due course.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 26, 1979

Re: No. 78-1078 - World-Wide Volkswagen Corp. v. Woodson

Dear Byron:

I shall await the dissent.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1979

Re: No. 78-1078 - World-Wide Volkswagen v. Woodson

Dear Byron:

I shall await the dissent.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 5, 1979

Re: No. 78-1078 - World-Wide Volkswagen v. Woodson

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 17, 1979

Re: 78-1078 - World-Wide Volkswagen Corp. v. Woodson

Dear Byron:

I join.

Regards,

WEB

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 28, 1979

Re: No. 78-1078 - World-Wide Volkswagen Corp. v. Woodson

Dear Byron:

Please join me.

Respectfully,

Mr. Justice White
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 18, 1980

Re: No. 78-1078 - World-Wide Volkswagen Corp. v. Woodson

Dear Thurgood:

Please join me in your dissenting opinion.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

Join BLW 12/17/79	will decert 11/15/79 1st Dept 11/16/79 2nd Dept 1/7/80 3rd Dept 1/11/80	Join BLW 11/16/79	10/8/79 1st Dept 11/15/79 2nd Dept 12/6/79	await decert 11/26/79 Typed Dept 1/17/80 Signed Dept 1/18/80	await decert 11/26/79 1st Dept 1/8/80 2nd Dept 1/18/80	Join BLW 11/16/79	Join BLW 12/5/79	Join BLW 11/28/79

78-1078 World Wide Volkswagen v. Woodson