No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

ASAHI METAL INDUSTRY CO., LTD.
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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QUESTIONS PRESENTED

Where a Taiwanese manufacturer marketing its products world-wide contracts for component parts overseas from a Japanese manufacturer which does not engage in any business activity in California, or in the United States, and sues the latter in a California court for indemnity on account of a product liability claim:

1. Is the mere awareness of the Japanese manufacturer that a substantial number of the Taiwanese manufacturer's finished products are sold in California adequate to establish the requisite contacts[1] giving the California court personal jurisdiction over it?

2. Is the requisite interest of the State of California[2] established by the declared intention of the California Supreme Court to apply California law to the relationship and transactions of the two alien manufacturers[3] and by the

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[1] International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980).

[2] McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957); *World-Wide Volkswagen* at 292.

[3] Appendix C-16.

assertion of a consequent interest in the orderly administration of California laws?[4]

Subsidiary included questions are noted in the margin.[5]

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[4] *Cf.* Appendix C-16 with *International Shoe* at 319; *World-Wide Volkswagen* at 297.

[5] Subsidiary and more particular questions raised by the decision below are:

(a) By selling parts with the awareness that some finished product would be sold in California, did the alien component manufacturer purposefully avail itself of the "benefits and protections" of California laws (*cf.* Appendix C-11 with Hanson v. Denckla, 357 U.S. 235, 253 (1958); *World-Wide Volkswagen* at 297) so that it should have expected to be haled into court in California because of the interest expressed by California in taking jurisdiction and applying California law? (*cf.* Appendix C-11 with Kulko v. California Superior Court, 436 U.S. 84, 97-98 (1978); Shaffer v. Heitner, 433 U.S. 186, 216 (1977); *World-Wide Volkswagen* at 297);

(b) Is sale to a manufacturer with awareness that one's product will be incorporated into products some of which will be sold in California the equivalent of conducting sales in California for jurisdictional purposes? (*see* Appendix C-15);

(c) Was the sale of the component parts to the manufacturer delivery "into the stream of commerce with the expectation that they will be purchased by consumers in the forum State"? (*cf.* Appendix C-12, fn. 7 with *World-Wide Volkswagen* at 298); and

(d) Is the sale of the finished product in California the unilateral activity of another which "cannot satisfy the requirement of contact with the forum state"? (*cf.* Appendix C-12, fn. 7 with *Hanson* at 253 and *World-Wide Volkswagen* at 298).

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Supreme Court of the State of California are named in the caption.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner prays that a writ of certiorari issue to review the final order of the California Supreme Court entered in this case on July 25, 1985.

OPINIONS BELOW

The decision of the Court of Appeal of the State of California was originally reported at 149 Cal. App. 3d 30, 194 Cal. Rptr. 741, but was subsequently decertified for publication when the Supreme Court of California granted a petition for hearing and is reproduced in Appendix B *infra*. The opinion of the California Supreme Court and dissenting opinion are reported at 39 Cal. 3d 35, 216 Cal. Rptr. 385, and reproduced in Appendix C, *infra*.

JURISDICTION

By a final order of July 25, 1985 entered the same date, the Supreme Court of the State of California denied Petitioner's Petition for Writ of Mandate directing the Superior Court for the County of Solano, State of California to quash summons and complaint served on Petitioner and discharged an alternative writ which had previously been issued by the Court of Appeal, State of California, First Appellate District. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(3).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

California Code of Civil Procedure section 410.10 states:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

The provision of the United States Constitution involved is the Due Process Clause of the Fourteenth Amendment:

> Section 1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

A California resident was killed and another injured in a motorcycle accident in California. It was claimed that the accident was caused by a sudden loss of air and explosion in the rear tire of the motorcycle. (Appendix C-1.)

In consequence a products liability action was filed in California alleging that the motorcycle tire, tube and sealant were defective. The complaint named Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube and other defendants. Cheng Shin, in turn, filed a cross-complaint seeking indemnity from various of its co-defendants and also from Asahi Metal Industry Co., Ltd. (Asahi), the Japanese manufacturer of the tube's valve assembly. (Appendix C-1-2.) Asahi was never named as a defendant by the California plaintiff. (Appendix B-1.) The case against Cheng Shin and the other defendants was settled and dismissed. (Appendix C-16, fn. 9.)

Asahi challenged the jurisdiction of the Superior Court of the State of California for the County of Solano to exercise jurisdiction over it for the indemnity claims of Cheng Shin by moving to quash service of summons, on the ground that California's exercise of jurisdiction over it would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment. The Superior Court denied the motion by an order asserting California jurisdiction. (Appendix A.)

Asahi then sought and obtained a Writ of Mandate from the Court of Appeal of the State of California ordering the Superior Court to quash service of summons and complaint on Asahi. The Court of Appeal, relying upon this Court's decision in *World-Wide Volkswagen Corp v. Woodson,* 444 U.S. 286 (1980), and the California Supreme Court's decision in *Secrest Machine Corp. v. Superior Court,* 33 Cal. 3d 664 (1983), concluded that it would not be reasonable to require Asahi to respond to an indemnity claim in California and that it would not be fair and reasonable for a California court to exercise jurisdiction. (Appendix B-5-6). The Supreme Court of California then granted a hearing. The effect of the grant was to vacate the decision of the Court of Appeal and

place the case before the Supreme Court in the same posture as it had been submitted to the Court of Appeal.

The following facts are those relied on or acknowledged by the Court of Appeal and the Supreme Court of California in reaching their decisions.

Asahi is a Japanese corporation. It has no offices, property or agents in California. It solicits no business and makes no sales here. (Appendix C-10.) It maintains no spare parts and gives no advice on maintenance, sales, or use in California. It does not advertise in California. It has conducted no deliberate economic acts to serve the tire market in California. (Appendix B-3.) In short, it does not do business in California.

Asahi manufactures valves for tires. Asahi has from time to time in the last ten years sold tire valves for use on motorcycle tire tubes to Cheng Shin in Taiwan and to other alien corporations. Between 1978 and 1982 Asahi sold 1,350,000 valve stem assemblies to Cheng Shin. Sales of tire valves to Cheng Shin in Taiwan in 1981 accounted for 1.24 percent of Asahi's total income for that year. Sales of tire valves to Cheng Shin in Taiwan in 1982 accounted for 0.44 percent of Asahi's total income for 1982. (Appendix C-2.) All of the sales of tire valve assemblies to Cheng Shin occurred in Taiwan. All of the shipments were sent from Japan to Taiwan. (Appendix B-2.)

Asahi is not Cheng Shin's exclusive supplier of valve assemblies. Cheng Shin purchases valve assemblies from other suppliers and markets its finished product throughout the world. Tubes sold in California (and presumably the United States) are marketed by Cheng Shin through a related company, Cheng Shin Tire USA, Inc., a California corporation. Approximately 20% of Cheng Shin's total United States sales (an unknown number) are in California. (Appendix B-2-3.)

Asahi "did not design or control the system of distribution that carried its valve assemblies into California." (Appendix C-11.) However Asahi knew that Cheng Shin sold its tubes throughout the world and the United States, having acquired this knowledge from Cheng Shin. (Appendix C-10, fn. 4.) Thus Asahi was aware of the probability that some of the tire valve assemblies it sold to

Cheng Shin in Taiwan would end up in California. (Appendix C-10, fn.4.)

The Supreme Court of California reversed the Court of Appeal and denied the writ. This had the effect of reinstating the Superior Court's Order denying Asahi's Motion for an Order Quashing Service of Summons and Cross-Complaint. The California Supreme Court, after acknowledging that jurisdiction could only be exercised against a nonresident defendant if minimum contacts with the State existed, concluded that California could exercise jurisdiction against Asahi for the indemnity claims of Cheng Shin because Asahi was aware that a substantial number of its products would be sold in the forum State. The Court specifically held that:

> [T]his court finds that the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state. [Appendix C-15.]

REASONS FOR GRANTING THE WRIT

A writ of certiorari should be granted because the Supreme Court of California has:

1. Decided a federal question in this case in a way in conflict with decisions of this Court or, in the alternative, decided an important question of United States constitutional law which has not been, but should be, settled by this Court; and

2. Decided a federal question in this case in conflict with decisions on the same matter of federal courts of appeals.

I. Background of the Questions

In *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980), this Court reestablished that there are territorial limitations imposed by the United States Constitution on asserting jurisdiction over nonresident defendants in products liability actions and held that as a threshhold consideration to any exercise of state court jurisdiction a nonresident defendant must

have certain "contacts, ties or relations" with the forum state. 444 U.S. at 291-92, 294. This Court further rejected the trend of state and federal court decisions which focused initially and primarily on the reasonableness or fairness of requiring the nonresident defendant to litigate in a distant or inconvenient forum (444 U.S. at 294) and on decisions that premised jurisdiction in product liability actions on precepts of foreseeability. (444 U.S. at 295-99.)

In *World-Wide Volkswagen* this Court reiterated the additional requirement of a showing of the forum state's interest in adjudicating the dispute (444 U.S. at 292). In previous decisions this Court had held that there are Due Process limitations on the application of the law of the forum state to foreign controversies[6] and that the requisite interest of the forum state cannot be shown by deciding in advance that the law of the forum state should apply to the dispute.[7]

Since *World-Wide Volkswagen* was decided, state and federal courts have sought to apply its teachings with mixed results. In the factual context of *World-Wide Volkswagen,* where the manufacturer of the product or its component parts is not involved, most courts have had no difficulty applying the standards set forth in *World-Wide Volkswagen.* However, where a nonresident manufacturer of the product, or the product's component parts, has claimed that it is not subject to jurisdiction in the forum state, mixed results have followed premised on varying analyses.

The major source of state and federal courts' apparent confusion stems from this Court's dictum in *World-Wide Volkswagen* that "[t]he forum State does not exceed its powers under the Due Process Clause if its 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

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[6] *E.g.,* Home Insurance Co. v. Dick, 281 U.S. 397 (1930); Allstate Insurance Co. v. Hague, 449 U.S. 302 (1981).

[7] Hanson v. Denckla, 357 U.S. 235, 253 (1958); Shaffer v. Heitner, 433 U.S. 186, 216 (1977); Kulko v. California Superior Court, 436 U.S. 84, 98 (1978).

forum State." 444 U.S. at 297-98. Despite the clear import of *World-Wide Volkswagen* that all nonresident defendants must have "contacts, ties or relations" with a forum state before personal jurisdiction may be asserted over them, many state and federal courts have interpreted *World-Wide Volkswagen's* dictum to mean that all manufacturers of products and their component parts who are aware that their products will be sold elsewhere are subject to personal jurisdiction everywhere that the products are sold. Thus, no threshold inquiry is conducted to ensure that the states do not exceed the territorial limitations imposed upon them by the Due Process Clause of the Constitution and, accordingly, nonresident defendants become subject to personal jurisdiction where their conduct in connection with the forum state is such that they do not reasonably anticipate being haled into court there, where they do not purposefully avail themselves of the privilege of conducting activities within the forum state or invoke the protection of its laws, and where the unilateral activity of those who have some relationship with the nonresident defendant is the only contact the nonresident has with the forum state.

The California Supreme Court in *Asahi* returned to the rejected concepts of foreseeability as the test for imposing jurisdiction against nonresident defendants, by articulating a standard of analysis which equates awareness with the minimum contacts requirement and holds that "the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state." (Appendix C-15.) The court further permitted the unilateral activity of others (Cheng Shin) to be imputed to Asahi and to serve as the basis of holding that Asahi had purposefully availed itself of the privilege of conducting activities within California. (Appendix C-12-13, fn. 7.) Finally, it based its finding of the State's interest on the assertion that the law of California should be applied to the dispute. (Appendix C-16.)

II. The Decision of the California Supreme Court Is in Conflict with Decisions of This Court.

A. The Decision Improperly Reinstates a Foreseeability Test as a Benchmark for Imposing Jurisdiction

World-Wide Volkswagen established a two-prong analysis for determining when a state may exercise personal jurisdiction over a nonresident defendant. As an initial and threshold consideration the nonresident defendant must have judicially cognizable "contacts, ties, or relations" with the forum state. (444 U.S. at 295-296.) If such contacts exist, then it must also be determined that the exercise of jurisdiction is fair and reasonable. (444 U.S. at 292-94.) Claims that jurisdiction could constitutionally be premised on concepts of foreseeability were rejected. The mere likelihood that a product would find its way into the forum state was not a sufficient basis to exercise jurisdiction over a nonresident. (444 U.S. at 295.) Similarly, the fact that a nonresident earned substantial revenue from goods used in the forum state could not, of itself, support jurisdiction. This Court, deeming the contrary argument to be a variant of the rejected foreseeability argument, stated that:

> financial benefits accruing to the defendant from a collateral relation to the forum state will not support jurisdicition if they do not stem from a constitutionally cognizable contact with that State. [444 U.S. at 299.]

The California Supreme Court in *Asahi* determined that Asahi was subject to California jurisdiction by employing the precise analysis rejected by this Court in *World Wide Volkswagen.* Instead of holding that Asahi was subject to California jurisdiction because it was foreseeable that Cheng Shin's tires with Asahi's valves would be found in California, the California Supreme Court held that Asahi was subject to California jurisdiction because it was "aware that a substantial number of its products will be sold in [California]." (Appendix C-15.) In a real sense the California Supreme Court merely substituted "awareness" for "foreseeability" and employed an impermissible constitutional basis for exercising jurisdiction over Asahi. Thus, as a

primary matter, the *Asahi* decision is in conflict with this Court's standard for analyzing jurisdiction cases.

B. The Decision Exercises Jurisdiction Based Upon the Unilateral Activities of Others

The California Supreme Court's conflict with this Court is not limited to its revitalization of the concept of foreseeability. Although Asahi "did not design or control the system of distribution that carried its valve assemblies to California" the California Supreme Court held that because it knew such a system existed and knew it would benefit economically from Cheng Shin's sales of Chen Shins products, Asahi had sufficient contacts with California to permit California to exercise jurisdiction over Asahi. (Appendix C-11-12.) The ruling is directly contrary to this Court's rulings that "the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State" (444 U. S. at 298, *quoting Hanson v. Denckla,* 357 U.S. 235, 253 (1958)), and the requirement that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla,* 357 U.S. at 253. Asahi's product is only located in California and sold there because Cheng Shin, through its unilateral activity, chooses to market it in California and purposefully avails itself of the privilege of conducting activities within California. Thus, the California Supreme Court unconstitutionally imputed Cheng Shin's contacts with California to Asahi in derogation of this Court's rulings in *Hanson, World-Wide Volkswagen* and *Rush v. Savchuk,* 444 U.S. 320, 331-32 (1980).

C. The Decision Improperly Applies the Stream of Commerce Theory of Jurisdiction Without Appropriate Constitutional Limitations

Fundamental to the California Supreme Court's decision in *Asahi* was this Court's dictum in *World-Wide Volkswagen* that:

> 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. [444 U.S. at 297-98.]

Relying on the stream of commerce dictum of *World-Wide Volkswagen* in isolation from the other affiliating circumstances that are a necessary predicate to the exercise of state jurisdiction, the California Supreme Court holds, essentially, that all manufacturers of products and component parts are subject to jurisdiction throughout the world if the manufacturer was aware that one way or another its product would be sold in any particular forum. (Appendix C-14-15.)

We submit that the California Supreme Court's application of this Court's dictum in *World-Wide Volkswagen* represents an additional conflict with a decision of this Court, at least to the extent it seeks to impose jurisdiction on product manufacturers who place their products in the stream of commerce, but who otherwise have no contacts, ties, or relations with the forum state. The stream of commerce theory of jurisdiction, as recognized by the Court of Appeal, is a

> means of sustaining jurisdiction in products liability cases in which the product had traveled through an extensive chain of distribution before reaching the ultimate consumer. [Appendix B-4, *citing DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir. 1981).]

It is premised on the belief that manufacturers should not be able to insulate themselves from jurisdiction by acting through intermediaries instead of dealing directly with the forum state. It thus serves as a warning to defendants who employ an indirect marketing scheme to sell their products within the forum that the courts will not condone that fiction.

Thus the stream of commerce theory of jurisdiction has no application to component parts manufacturers, such as Asahi, who only supply material to others, who may or may not intend to deal with a particular forum. It has no application to those who do not have an indirect marketing scheme to serve the forum. It has no application to those who do not deliberately design their product with the anticipation that the product will be used in the United States and do not attempt to comply with United States

rules and regulations in so designing their product, but leave those considerations to the manufacturer of the product to be marketed here. The stream of commerce theory of jurisdiction *still* requires some actual, voluntary and deliberate conduct by the nonresident defendant with the forum State.[8]

Asahi has made no attempt to exploit the California marketplace. Asahi has made no attempt to insulate itself from direct dealings with the forum state by using intermediaries. Asahi has no marketing scheme to serve California. Asahi does not deliberately design its products so as to comply with local rules and regulations.

The California Supreme Court fails to recognize the constitutional limitations to the stream of commerce theory of jurisdiction which were implicit in this Court's ruling in *World-Wide Volkswagen,* and, thus, its decision in *Asahi* is in conflict with this Court's decision in *World-Wide Volkswagen.*

D. The Decision Applies California Law to the Case as the Basis for Finding the Interest of the State to Establish Jurisdiction

The California Supreme Court based its ruling on a constitutionally unsupportable premature conclusion that California law would govern the merits, contrary to rulings of this Court and federal courts of appeals under the Due Process Clause.

In *World-Wide Volkswagen* this Court pointed out that the forum state's interest in adjudicating the dispute was a relevant factor in meeting the requirement of reasonableness under *International Shoe* (at 292).

Therefore, after finding the contacts of Asahi with California sufficient, the California Supreme Court turned its attention to the question of California's interest and immediately discovered

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[8] Implicit in this Court's rulings is that there be actual and voluntary contacts by the nonresident defendant with the forum state before jurisdiction may be asserted over it. *See* Louis, *The Grasp of Long Arm Jurisdiction Finally Exceeds Its Reach: A Comment on World-Wide Volkswagen Corp. v. Woodson and Rush v. Savchuk,* 58 N.C.L. Rev. 407, 428 (1980).

"a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." (Appendix C-16.) By this the Court meant nothing less than the application of California law to the claim of the Taiwanese manufacturer against the Japanese manufacturer, which necessarily depends upon their transactions with each other.[9] Indeed, with marvelous facility and infallible circular reasoning, the Court anticipated this point by treating the assumed application of California law to Far Eastern transactions as the "protections of California's laws" of which Asahi "purposefully availed itself" for the purpose of meeting the contacts test of jurisdiction (Appendix C-11.) In doing so it regarded the possibility of being sued in California as one of the "privileges and benefits"[10] of California law!

The Court found supplemental interests of California in "the orderly administration of its laws . . . where, as here, 'most of the evidence, testimonial and otherwise, is within its borders . . .' "[11] and in the fact that Cheng Shin had named "numerous defendants" and the "possibility of inconsistent verdicts if Asahi cannot be sued in California." (Appendix C-16.)

Here again California assumes the application of its law in undertaking a burden of orderly administration, while the concern with inconsistent verdicts begs the question by assuming a California interest in the verdict as to Asahi.

The application of forum state law to foreign defendants is limited by considerations of due process under the Constitution.

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[9] Hedrick v. Daiko Shoji Co., 715 F.2d 1355 (9th Cir. 1983), *reh'g granted, op. withdrawn, in part*, 733 F.2d 1335 (9th Cir. 1984), which the court cited here was clearly distinguishable as a tort suit by an Oregon resident who had not yet been compensated, as has occurred in the case of the Californian here.

[10] *World-Wide Volkswagen* at 295.

[11] The notion that most of the evidence about the Japanese and Taiwanese manufacturing processes and the transactions between the manufacturers would be within the borders of California is unsupported by the record and whimsical.

Home Insurance Co. v. Dick, 281 U.S. 397 (1930); *Allstate Insurance Co. v. Hague,* 449 U.S. 302 (1981). As the Court unanimously held in *Home Insurance,* an objection that the application of state law to contracts made and to be performed abroad violates the Constitution "raises federal questions of substance" (at 407). Again in the *Allstate* case, while there were divergent opinions, all the justices agreed that the application of forum state law was to be tested under the Due Process Clause.[12]

This Court has in recent years consistently resisted the argument that the involvement of forum state law could be reached preliminarily and made a basis for taking personal jurisdiction, even in a case where it could be recognized that the forum state law was almost certainly involved.

In *Hanson v. Denckla,* 357 U.S. 235, 253 (1958), it had been argued in favor of Florida jurisdiction that Florida law was applicable. The court rejected consideration of factors which might be justifiable in ruling on choice of law and concluded:

> [The Florida court] does not acquire that jurisdiction by being the "center of gravity" of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice of law.

In *Shaffer v. Heitner,* 433 U.S. 186, 216 (1977), Delaware jurisdiction was rejected despite an argument made from the rather obvious applicability of Delaware law and this Court said:

> But like *Heitner's* first argument, this line of reasoning establishes only that it is appropriate for Delaware law to govern the obligations of appellants to Greyhound and its stockholders. It does not demonstrate that appellants have "purposefully avail[ed themselves] of the privilege of conducting activities within the forum state," *Hanson v.*

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[12] The *Allstate* case concerned choice between laws of neighboring states but the *Home* case involved a conflict between Texas and Mexico. While the resolution of such questions will differ when the Full Faith and Credit Clause is involved, there is no indication that the test under the Due Process Clause is different in the one case than the other.

> *Denckla, supra,* at 253, in a way that would justify bringing them before a Delaware tribunal."

That the issue of taking choice of law into account was actively considered in that case is indicated by Mr. Justice Brennan's dissent, 433 U.S. at 219, 224-25, where he recognized that "jurisdictional and choice-of-law inquiries are not identical", but observed that they were closely related and depended upon similar considerations and stated:

> Furthermore, I believe that practical considerations argue in favor of seeking to bridge the distance between the choice of law and jurisdictional inquiries.[13]

Again, in *Kulko v. California Superior Court*, 436 U.S. 84, 98 (1978), this Court rejected the argument that even the ultimate application of California law and California's interest in applying it weighed in favor of personal jurisdiction in California:

> But while the presence of the children and one parent in California arguably might favor application of California law in a lawsuit in New York, the fact that California may be the "center of gravity" for choice of law purposes does not mean that California has personal jurisdiction over the defendant. *Hanson v. Denckla*, at 254.[14]

Thus has this Court indicated that a state court seeking to establish personal jurisdiction cannot proceed by first assuming jurisdiction to determine what law would apply, and then using the application of its own law as a footing for the jurisdiction.

It may be argued that it is too early to determine on the record in this case what law should apply to the transactions between the Japanese and Taiwanese manufacturers. If so, it is surely improper to assume the determination for the purpose of taking

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[13] *See* Martin, *Personal Jurisdiction and Choice of Law,* 78 Mich. L. Rev. 872 (1980), urging this Court to apply the same test of minimum contacts to choice of law as to jurisdiction.

[14] *But cf.* McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957), apparently giving weight to California's interest in applying her laws regarding insurance.

jurisdiction and applying the assumed law. On the record available the assumption of the Court below has not even an apparent claim to correctness because it is contrary to the standards constitutionally applied by this Court over a long period to foreign contracts.

This Court has continually held it to be a general rule that, in the absence of evidence that the parties to a contract had any other intention at the time of making it, the nature, obligation and interpretation of the contract are governed by the law of the place where it was made and that such is the presumed intention of the parties.[15] In applying the rule in *Mutual Life Insurance Co. of New York v. Liebing*, 259 U.S. 209, 214 (1922), Justice Holmes said that:

> although the circumstances may present some temptation to seek a different one by ingenuity, the Constitution and the first principles of legal thinking allow the law of the place where a contract is made to determine the validity and the consequences of the act.

In other contexts this Court has rejected the enticements of legal jingoism in international commerce.[16]

If the California Court had based its claim of interest on a flatly stated policy to avoid the presence of all unsafe objects in

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[15] Extensive past evidence for this rule was collected in Liverpool and Great Western Steam Co. v. The Phenix Ins. Co., 129 U.S. 397 (1889). It has continued to be applied, *e.g.*, in Hall v. Cordell, 142 U.S. 115 (1891); Gaston, Williams, & Wigmore of Canada, Ltd. v. Warner, 260 U.S. 201 (1922); Mutual Life Ins. Co. of New York v. Liebing, 259 U.S. 209 (1922).

[16] This Court cautioned in M/S BREMEN, et al. v. Zapata Off-Shore Co., 407 U.S. 1, 9 (1972) that "we cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts."
And in Scherk v. Alberto-Culver Co., 417 U.S. 506, 517 n.11 (1974), the Court observed that the notion that American standards must govern "demeans the standards of justice elsewhere in the world, and unnecessarily exalts the primacy of the United States law over the laws of other countries".

California, it would clearly have posed the question whether the state could blanket with its laws and judicial reach the whole world from which products pass in and through California. It would have been reminiscent of Lord Ellenborough's famous question, "Can the Isle of Tobago pass a law to bind the rights of the whole world?"[17] The California court has invoked the same power in only slightly softer words.

The unexamined premise by which California assumes the application of her laws as a basis for her taking jurisdiction to apply them will not pass examination unless this Court desires to modify the standards it has previously applied.[18]

III. The Decision of the California Supreme Court Is in Conflict with Decisions of Federal Courts of Appeal

A. Conflicts on the Application of the Stream of Commerce Theory of Jurisdiction

Asahi and other decisions of state courts of last resort[19] irreconcilably conflict with several federal court of appeals decisions

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[17] Buchanan v. Rucker, 9 East 192, 194 (1808).

[18] *See* Mr. Justice Brennan's dissent in Shaffer v. Heitner at 224-25, urging such modification.

[19] *See, e.g.,* Ford Motor Co. v. Atwood Vacuum Machine Co., 392 So. 2d 1305 (Fla.), *cert. denied and appeal dismissed,* 452 U.S. 901 (1981), a case in which an Illinois door hinge manufacturer who sold its products to Ford in Michigan was held subject to jurisdiction in Florida for the product liability indemnity claims of Ford. *See also* Volkswagenwerk A.G. v. Klippan GmbH, 611 P.2d 498 (Alaska), *cert. denied,* 449 U.S. 974 (1980), a case in which a German seatbelt manufacturer was held subject to Alaska jurisdiction for alleged defects in a seatbelt installed on a German Volkswagen. *Klippan* arguably is consistent with the rationale articulated in cases limiting the stream of commerce theory of jurisdiction insofar as jurisdiction was not premised solely on the fact that the seatbelt manufacturer placed its product into the stream of commerce since there existed purposeful activity in the form of deliberately designing its product to comply with United States laws and regulations in anticipation of its being widely used and marketed in America. See discussion section II.C, *supra.*

which refuse to extend the stream of commerce theory of jurisdiction to situations where the product manufacturer has not engaged in any voluntary conduct with respect to the forum.

Directly in conflict with *Asahi* is the decision in *Humble v. Toyota Motor Co.,* 578 F. Supp. 530 (N.D. Iowa 1982), *aff'd,* 727 F.2d 709 (8th Cir. 1984). In *Humble,* plaintiff sought recovery for personal injuries sustained in an automobile accident which occurred in Iowa and claimed that the seats of the automobile were somehow defective. Plaintiff sued the manufacturer of the automobile (Toyota Motor Co., Ltd.) and the manufacturer of the seats, Arakawa Auto Body Co., Ltd. ("Arakawa"). Arakawa was a Japanese corporation which sold its seats in Japan to Toyota. Arakawa had no contacts with Iowa or the United States. The court concluded that Arakawa did not have sufficient minimum contacts with Iowa. The court noted that the only possible contacts Arakawa could be said to have with the United States or Iowa were by way of the fact that Toyota sells automobiles containing parts manufactured in Japan by Arakawa and concluded that the contacts between Iowa and Arakawa were "simply too fortuitous and tenuous to warrant the exercise of personal jurisdiction over Arakawa." 758 F. Supp. at 532. While it was foreseeable that Arakawa's product would find its way into the United States and Iowa, Arakawa had not purposely availed itself of the privilege of conducting business in Iowa. Cases relying upon the stream of commerce theory of jurisdiction were distinguished as involving direct efforts to serve the American market. (*See Oswalt v. Scripto, Inc.,* 616 F.2d 191 (5th Cir. 1980.) The *Humble* court contrasted cases such as *Oswalt* with cases such as *Hutson v., Fehr Brothers,* 584 F.2d 833 (8th Cir.), *cert. denied,* 439 U.S. 983 (1978), a case also in conflict with this case, concluding that no jurisdiction could be obtained over a foreign defendant who placed a product in the stream of commerce where the foreign defendant did not consciously solicit or market the product in the United States and thus had not purposely availed itself of the privilege of conducting business within the forum state.

Similarly in conflict with *Asahi* is the decision in *DeJames v. Magnificence Carriers, Inc.,* 654 F.2d 280 (3d Cir.), *cert. denied,*

454 U.S. 1085 (1981), which in turn conflicts with *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983), *reh'g granted, op. withdrawn, in part,* 733 F.2d 1335 (9th Cir. 1984).[20] In these cases, alien manufacturers of vessels or their component parts were resisting the exercise of jurisdiction over them for personal injury claims of local plaintiffs.[21] Neither of the alien defendants had sought to market its product in the forum state directly or indirectly, and no contacts, ties or relations with the forum state were attributed to them. The court in *DeJames* rejected the concept that the stream of commerce theory of jurisdiction could provide a constitutional basis for imposing jurisdiction over the alien manufacturer where it did not voluntarily act with respect to the forum and did not seek to insulate itself from jurisdiction by acting through intermediaries instead of dealing directly with the forum state.[22] The court in *Hedrick* found no such constraints on the stream of commerce theory of jurisdiction. Merely producing a wire rope splice in Japan for a Japanese vessel that undoubtedly would visit United States ports was a sufficient basis for asserting jurisdiction over the wire rope manufacturer in whatever forums the owner of the vessel chose to visit. (715 F.2d at 1358.)

Asahi and the cases cited above clearly indicate that more than one constitutional analysis is being employed to determine whether nonresident product manufacturers (particularly component parts manufacturers) whose products find their way to a particular state exclusively through the unilateral activity of

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[20] *See also* Sousa v. Ocean Sunflower Shipping Co., 608 F. Supp. 1309 (N.D. Cal. 1984), where the district court in a similar case declines to follow its own court of appeals in *Hedrick* on the basis that the court of appeals has misread *World-Wide Volkswagen.*

[21] In *DeJames* the nonresident defendant was a Japanese company which converted a bulk carrier to an automobile carrier in Japan. In *Sousa* the defendant was a Japanese shipbuilder which designed and constructed a ship to be used by another Japanese company in trade between Japan and the United States. In *Hedrick* the defendant was a Japanese company which manufactured a wire rope splice that it sold to a Japanese vessel.

[22] See discussion, section II.C, *supra.*

others, are subject to a particular forum's jurisdiction. The Due Process Clause, however, will not permit defendants identically situtated to be treated completely differently based solely upon the particular state which is seeking to exercise jurisdiction. Constitutionally, states which authorize the exercise of jurisdiction on any basis not inconsistent with the Constitution of the United States must uniformly exercise jurisdiction against nonresidents.

Asahi thus presents this Court with the opportunity to resolve the conflicts which exist between the states and circuits and to establish a uniform basis upon which state courts will determine whether or not to exercise jurisdiction in future product liability cases.

B. Conflicts on the Application of State Law to Establish a State Interest in Exercising Jurisdiction

In none of the federal cases cited above have the courts regarded the desire, nor even the actual right, of the forum state to apply its own law as an interest of the state for the purpose of establishing the fairness and reasonableness of exercising jurisdiction. In this respect, too, the Supreme Court of California is in direct conflict with federal courts of appeals, notably in *Iowa Electric Light & Power Co v. Atlas Corp.*, 603 F.2d 1301, 1304 (8th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Galgay v. Bulletin Co.*, 504 F.2d 1062, 1066 (2d Cir. 1974); and *Southern Machine Co. v. Mohasco Industries, Inc.*, 401 F.2d 374, 382 (6th Cir. 1968). *But contra Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 498 (5th Cir. 1974); *and see Blount v. Peerless Chemicals (P.R.) Inc.*, 316 F.2d 695 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963). In rejecting or not adopting the application of forum state law as showing the interest of the state, other courts of appeals have usually not discussed the matter, perhaps because it was not raised or thought worthy of discussion. As the matter ought to be clear in light of past decisions of this Court, we have discussed this point in detail under the heading of "Conflict with Decisions of This Court" above.

IV. The Question Is Important and Should Be Settled

It is unnecessary to elaborate the seriousness with which this Court has always regarded the exercise of jurisdiction by a state over those who are neither citizens nor residents of it. The importance in principle of the questions raised is manifest throughout the opinions, majority, concurring and dissenting, in the Court's cases already cited by us and all others in descent from *International Shoe.*

The questions raised here are important also in their incidence. This case and others cited involving the same or closely analagous applications of principles laid down by this Court are but indications of many more instances of confusion, doubt and difference to be found in courts of first instance. The Justices need only consult their own perceptions of the complexity of international commerce, stimulated by technology and increased commercial ingenuity, to recognize that there are countless and growing numbers of products owing their provenance to several manufacturers and nations. It requires little argument, we submit, to support the view that it is highly important for the manufacturers of components to know whether and when they are subject to jurisdiction here and who, as between themselves and the ultimate manufacturers and distributors, has the responsibility for complying with state laws and standards.

CONCLUSION

For the foregoing reasons we respectfully submit that the Court should grant a writ of certiorari to review the decision of the Supreme Court of California.

Respectfully submitted,

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Of Counsel

(Appendices follow)

Appendix A

In the Superior Court of the State of California
In and for the County of Solano
Department No. V

No. 76180

Michael Zurcher, et al.,
Plaintiffs,
vs.
Dunlop Tire & Rubber Co., et al.,
Defendants.

ORDER DENYING MOTION TO QUASH SUMMONS

[Filed April 22, 1983]

Hearing on cross-defendant Asahi Metal Industry Co., Inc., Motion to Quash came regularly before the Court on April 12, 1983, attorney Michael Dobrin appearing on behalf of defendant, attorney Richard D. Hoffman appearing on behalf of cross-defendant Asahi Metal Industry Co., Inc., and attorney Ronald R. Haven appearing on behalf of cross-complainant Chen Shin Rubber Industrial Co., Ltd oral arguments having been presented and the matter submitted to the Court.

The defendant Asahi is alleged to have manufactured a tire valve which was defective and caused the injuries complained of herein. Plaintiff did not sue Asahi but the defendants have attenpted to bring Asahi before the Court on cross-complaints. Asahi has no office, agents, or employees in California. It does not do business directly in California. Asahi did sell tire valves to Cheng Shin of Taiwan, who installed them in innertubes and sold many in the United States and specifically in California. From 1978 to 1982 Cheng Shin purchased 1,250,000 tire tube valve assemblies from Asahi. Asahi was advised by Cheng Shin that its tubes with Asahi valves would be sold in the United States.

The Court must view the commercial actuality of the situation. Asahi availed itself of the California market and benefitted therefrom and it was foreseeable that it would do so. The

declarations indicate a volume of Asahi tire valves in this jurisdiction sufficient to indicate that Asahi's availing itself of this market was not an isolated occurrence. Asahi has the requisite minimum contacts with this jurisdiction.

It is fair and reasonable that the case be tried here. Plaintiffs are California residents. One or more of the defendants or cross-defendants are California residents. The accident and injuries occurred here. Asahi asserts inconvenience without supporting facts on the other hand, Asahi obviously does business on an international scale. It is not unreasonable that they defend claims of defect in their product on an international scale.

THEREFORE, IT IS ORDERED, that the Motion to Quash Summons be and the same is hereby denied.

Dated: April 20, 1983.

s/ DWIGHT ELY
Judge of the Superior Court

Appendix B

In the Court of Appeal of the State of California

First Appellate District

Division Five

Certified For Publication

A022366

Sup.Ct.No. 76180

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

THE SUPERIOR COURT OF SOLANO COUNTY,
Respondent,

CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
Real Party in Interest.

[Filed Sept. 15, 1983]

Asahi Metal Industry Co., Ltd., a Japanese corporation, seeks by petition for writ of mandate to compel respondent superior court to quash service upon it of summons on a cross-complaint in a California product liability action. We grant the writ because, on the record before us, Asahi has insufficient contacts with California to subject it to respondent court's jurisdiction.

Asahi manufactures tire valve assemblies in Japan and sells the assemblies to several different tire manufacturers for use as components in finished tires. One such manufacturer is Cheng Shin Rubber Industrial Co., Ltd., in Taiwan. In September 1978, Gary Zurcher was injured and his wife was killed when a tire on their motorcycle blew out as they were driving on a freeway in Solano County. The tire's tube had been manufactured by Cheng Shin and incorporated an Asahi valve assembly. Zurcher and his children brought this action, attributing the accident to Cheng Shin among others. Asahi is not named as a defendant. More than two years after the action was commenced, Cheng Shin filed a

cross-complaint for indemnity (cf. *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578) against the other defendants and several new cross-defendants including Asahi. Summons on the cross-complaint was served on Asahi, which moved to quash the service. Asahi's motion was denied and this writ petition followed.

Service on Asahi was effected in Japan under applicable treaty and is not challenged. Asahi contends that it is not subject to the jurisdiction of the California court and that "[i]t would be extremely inconvenient and burdensome for ASAHI to enter into this litigation in California for a claim unrelated to any conduct of ASAHI outside of JAPAN."

The relevant rules were recently summarized by the Supreme Court in *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664, 668-670. There is no need either to reprint or to paraphrase that summary. In this rapidly shrinking commercial world with business activities becoming increasingly integrated and interdependent, it is possible for a foreign manufacturer of a component embodied elsewhere into another foreign manufacturer's finished product, by reason of deliberate or foreseeable indirect activity to be found subject to California jurisdiction for claims based on asserted defects in the component. (Cf. *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 903; *St. Joe Paper Co. v. Superior Court* (1981) 120 Cal.App.3d 991.) But under the case law as synthesized in *Secrest,* the dispositive question here is whether the quality and nature of Asahi's contacts with California are such that it would be reasonable in all the circumstances to require Asahi to come to California to respond to Cheng Shin's cross-complaint.

According to Asahi's president "Asahi has from time to time in the last ten years sold tire valves for use on motorcycle tire tubes to Cheng Shin . . . in Taiwan. All of the sales occurred in Taiwan. All of the shipments were sent from JAPAN to TAIWAN. None of the shipments were made to California." Cheng Shin bought and incorporated 150,000 Asahi valve assemblies in 1978; 500,000 in 1979; 500,000 in 1980; 100,000 in 1981; and 100,000 in 1982. Sales to Cheng Shin accounted for 1.24 percent of Asahi's gross in 1981 and 0.44 percent in 1982. Cheng Shin purchases valve

assemblies from suppliers other than Asahi as well, and sells finished tubes throughout the world; it alleges that approximately 20 percent of its sales in the United States are in California. It markets its tubes in California through Chen Shin Tire USA, Inc., a California corporation, which apparently is not involved in this lawsuit.

The record contains an unscientific sampling of the inventory of a cyclery in Solano County, conducted earlier this year, which indicates that of approximately 117 tubes on hand, 97 had been manufactured in Japan or Taiwan, that of the 97, Cheng Shin had manufactured 53 (somewhat more than half), and that Asahi had provided the valve stem assemblies for slightly less than one-fourth of the Cheng Shin tubes (and for approximately the same percentage of the other Japanese and Taiwanese tubes).

According to Asahi's president "ASAHI does not do business in California. It has no office in California. It has no agents in California. It has no employees in California." It maintains no spare parts and gives no advice on maintenance, sales, or use in California. It does not advertise in California. It does not solicit business in California. It has conducted no deliberate economic acts to serve the tire market in California. It owns no property in California. Further, the president declares that "ASAHI has never contemplated that its limited sales of tire valves to Cheng Shin in Taiwan would subject it to lawsuits in California."

A Cheng Shin manager, on the other hand, declares that "[i]n discussions with ASAHI regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that ASAHI was fully aware that valve stem assemblies sold to my Company and to others would end up throughout the United States and in California."

Asahi had only such contact with California as is implicit in the fact that it sold components to another nonresident manufacturer which foreseeably would sell the finished product in California. By selling valve stem assemblies to Cheng Shin in these circumstances, was Asahi " 'engaging in economic activity within this state "as a matter of commercial actuality" ' " within the meaning

of *Secrest Machine Corp. v. Superior Court, supra,* 33 Cal.3d at p. 669 and *Buckeye Boiler Co. v. Superior Court, supra,* 71 Cal.2d 893, 902-903? Could Asahi thus be said purposefully to have availed itself "of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" within the meaning of *Hanson v. Denckla* (1958) 357 U.S. 235, 253, and cognate cases?

Strongest support for affirmative answers, in these circumstances, would come from what has been called the "stream-of-commerce" theory of jurisdiction over nonresident manufacturers. This theory, usually attributed to *Gray v. American Radiator & Standard Sanitary Corp.* (1961) 22 Ill.2d 432 [176 N.E.2d 761], was authoritatively validated in *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286: "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." (444 U.S. at pp. 297-298.) One federal court has explained the theory as follows: "The stream-of-commerce theory developed as a means of sustaining jurisdiction in products liability cases in which the product had traveled through an extensive chain of distribution before reaching the ultimate consumer. Under this theory, a manufacturer may be held amenable to process in a forum in which its products are sold, even if the products were sold indirectly through importers or distributors with independent sales and marketing schemes. Courts have found the assumption of jurisdiction in these cases to be consistent with the due process requirements identified above: by increasing the distribution of its products through indirect sales within the forum, a manufacturer benefits legally from the protection provided by the laws of the forum state for its products, as well as economically from indirect sales to forum residents. Underlying the assumption of jurisdiction in these cases is the belief that the fairness requirements of due process do not extend so far as to permit a manufacturer to insulate itself from the reach of the forum state's long-arm rule by using an intermediary or by professing ignorance of the ultimate destination of its products." (*DeJames v. Magnificence Carriers, Inc.* (3d Cir. 1981) 654 F.2d 280, 285.)

But *World-Wide Volkswagen* also points out that mere foreseeability that the product will enter the forum state will not be enough by itself to establish jurisdiction over the distributor and retailer: " '[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. . . . [¶] If foreseeability were the criterion . . . [e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel." (444 U.S. at pp. 295-296.) To reconcile *World-Wide Volkswagen's* endorsement of the stream-of-commerce theory with its views on foreseeability, we conclude that "expectation" that the product will be purchased in the forum state means something more than mere foreseeability that the product will be so purchased. *World-Wide Volkswagen* acknowledges that foreseeability is not " . . . 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." (444 U.S. at p. 297.)

These are elastic terms consistent with the California Supreme Court's caution in *Secrest* that there is no bright line to be drawn between cases in which there are sufficient contacts between the forum and the foreign defendant and those in which there are not. *World-Wide Volkswagen* points out that "[t]he concept of minimum contacts . . . 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." (444 U.S. at pp. 291-292.) *World-Wide Volkswagen's* second point is applicable a fortiori where it is proposed that a state's sovereignty be extended *beyond* the federal system. Implicit in each of the two functions *World-Wide Volkswagen* identifies is a balancing of interests among the litigants and the forum.

In the circumstances here, we conclude that it would not be reasonable to require Asahi to respond in California solely on the

basis of ultimately realized foreseeability that the product into which its component was embodied would be sold all over the world including California.

Furthermore, we conclude that it would not be fair and reasonable for a California court to exercise jurisdiction. It is not reasonable to require a component manufacturer, a small part of whose trade is with a Taiwanese fabricator, to come to California to respond to this cross-complaint.

Let a peremptory writ of mandate issue commanding respondent superior court to vacate its order denying the motion of Asahi Metal Industry Co., Ltd., to quash service of summons, and to enter an order granting the motion.

LOW, P.J.

We concur:

KING, J.

HANING, J.

Appendix C

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. 24657

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,

v.

THE SUPERIOR COURT OF SOLANO COUNTY,
Respondent;

CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
Real Party in Interest.

[Filed July 25, 1985]

SEE DISSENTING OPINION

Can California constitutionally exercise personal jurisdiction over a manufacturer of component parts who made no direct sales in California but had knowledge that a substantial number of its parts would be incorporated into finished products sold in the state?

I.

In 1978, Gary Zurcher was severely injured when he lost control of his Honda motorcycle and collided with a tractor rig. His passenger and wife, Ruth Ann Moreno, was killed. The accident was allegedly caused by a sudden loss of air and an explosion in the rear tire of the motorcycle. Both Zurcher and Moreno were California residents. The collision occurred on a California highway.

Zurcher filed a products liability action alleging that the motorcycle tire, tube, and sealant were defective. Zurcher's complaint named, inter alia, Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube, and Sterling May Company, Inc., the California retailer. Cheng Shin, in turn, filed a cross-complaint seeking indemnity from its co-

defendants and from Asahi Metal Industry Co., Ltd. (Asahi), the manufacturer of the tube's valve assembly.

Asahi is a major Japanese producer of valve assemblies. Its product is incorporated into tubes sold throughout the world, including tubes sold to the large motorcycle manufacturers. The declarations presented to the trial court established that Asahi has the following contacts in California.

For 10 years, Asahi has done business with Cheng Shin, a tube manufacturer that makes 20 percent of its United States sales in California. Between 1978 and 1982, Asahi sold 1,350,000 valve assemblies to Cheng Shin. Such sales represented 1.24 percent of Asahi's gross income in 1981 and .44 percent of its gross income in 1982. In addition, Asahi valve assemblies are incorporated into the tubes of numerous other manufacturers selling tubes in California.[1]

Asahi moved to quash service of summons. The trial court denied the motion, finding that Asahi had the requisite minimum contacts with California and that jurisdiction was fair and reasonable. The trial court relied on (1) the significant number of tubes with Asahi valve assemblies sold in California, (2) the number of valve assemblies Asahi sold to Cheng Shin, (3) Cheng Shin's substantial business with California, and (4) Asahi's knowledge that its valve assemblies would be incorporated into tubes sold in California.

Asahi now seeks a writ of mandate compelling the trial court to grant its motion to quash service of summons.

II.

California's long-arm statute provides that it can exercise jurisdiction "on any basis not inconsistent with the Constitution of

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[1] At the hearing on the motion to quash service of summons, Cheng Shin presented the declaration of one of its lawyers, who described his survey of the store operated by defendant Sterling May Company, Inc. Of the 97 Japanese or Taiwanese tubes offered for sale, 21 of the tubes or 22 percent contained Asahi valve assemblies. (The store offered fewer than 20 tubes that were not manufactured in Taiwan or Japan.)

this state or of the United States." (Code Civ. Proc., § 410.10.) Asahi contends that its connection with California does not warrant jurisdiction. It cites the due process clause of the Fourteenth Amendment of the United States Constitution, which bars the states from entering judgments affecting the rights or interests of a nonresident defendant absent such "minimum contacts" with the state that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " (Internat. Shoe Co. v. Washington (1945) 326 U.S. 310, 316 [hereafter *International Shoe*], quoting Milliken v. Meyer (1940) 311 U.S. 457, 463.)

As the United States Supreme Court noted in *International Shoe,* the minimum contacts test is not "mechanical or quantitative," but depends upon the "quality and nature" of the defendant's activities within the state. (*International Shoe, supra,* 326 U.S. at p. 319.) If a nonresident corporation's activities are sufficiently wide-ranging, systematic, and continuous, it may be subject to jurisdiction within the state on a cause of action unrelated to those activities. (*Id.*, at p. 318; Secrest Machine Corp. v. Superior Court (1983) 33 Cal.3d 664, 669; Buckeye Boiler Co. v. Superior Court (1969) 71 Cal.2d 893, 898-899.) Where the activity is less extensive, the cause of action "must arise out of or be connected with the defendant's forum-related activity." (*Buckeye Boiler, supra,* 71 Cal.2d at p. 899; see also *Secrest, supra,* 33 Cal.3d at p. 669.)

Thus, in determining whether the defendant's contacts with the forum are sufficient to warrant jurisdiction, the courts must focus on "the relationship among the defendant, the forum, and the litigation." (Shaffer v. Heitner (1977) 433 U.S. 186, 204; accord *Secrest, supra,* 33 Cal.3d at p. 668.) "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.' " (World-Wide Volkswagen Corp. v. Woodson (1980) 444 U.S. 286, 292, quoting *International Shoe, supra,* 326 U.S. at p. 317, emphasis added.)

In the 40 years since *International Shoe* was decided, the minimum contacts standard has been "substantially relaxed." (*World-Wide Volkswagen, supra,* 444 U.S. at p. 292.) In McGee

v. International Life Ins. Co. (1957) 355 U.S. 220, the Supreme Court described the reason for liberalizing the rule. "In part this is attributable to the fundamental transformation of our national economy over the years. 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." (*Id.*, at pp. 222-223.) Moreover, as the Supreme Court observed in *Worldwide Volkswagen,* "[t]he historical developments noted in *McGee* . . . have only accelerated in the generation since that case was decided." (444 U.S. at p. 293.)

However, liberalization of the minimum contacts rule has not proceeded unabated. Shortly after *McGee* was decided, the Supreme Court warned that the state courts' jurisdiction over nonresidents is not limited solely by the inconvenience of litigating in a foreign tribunal. In addition to protecting defendants from the burdens of "distant litigation," the jurisdictional limits imposed by the due process clause "are a consequence of the territorial limitations on the power of the respective States." (Hanson v. Denckla (1958) 357 U.S. 235, 251.)

Therefore, even when a nonresident defendant would suffer only minor inconvenience as a result of the exercise of jurisdiction, "minimal contacts" with the forum are constitutionally required. (*Ibid.*) The *Hanson* court did not define the "minimal contacts" requirement except to hold that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (*Id.*, at p. 253.)

More than 20 years after the *Hanson* decision, the Supreme Court applied the "purposefully avails" standard to an action for products liability. (See *World-Wide Volkswagen, supra,* 444 U.S. 286, 297-298.) As in *Hanson,* the court in *World-Wide Volkswagen* stressed the limitations of the states' jurisdiction over

nonresidents, citing principles of "interstate federalism." (*Id.*, at pp. 293-294.) Applying these principles, the court held the defendants' contacts with the forum insufficient to warrant jurisdiction. (*Id.*, at p. 299.)

Plaintiffs in *World-Wide Volkswagen* sued the manufacturer, importer, regional distributor, and retailer of their car for damages arising out of an automobile accident. The regional distributor (World-Wide) sold vehicles, parts, and accessories to dealers in New York, New Jersey, and Connecticut. The retailer (Seaway) sold cars only in New York, where plaintiffs purchased their car. Neither the distributor nor the retailer did any business in Oklahoma or shipped products to Oklahoma. (*Id.*, at pp. 288-289.)

The accident occurred in Oklahoma as plaintiffs were driving across the country. There was no evidence that any cars sold by World-Wide or Seaway had entered the state in the past. The Supreme Court found that Oklahoma lacked jurisdiction over World-Wide and Seaway because neither corporation sold cars to Oklahoma customers nor "indirectly, through others, serve[d] or [sought] to serve the Oklahoma market." (*Id.*, at p. 295.)

Plaintiffs in *World-Wide Volkswagen* argued that jurisdiction was proper because their automobile's inherent mobility made it foreseeable that the car would cause injury in Oklahoma. The court rejected this contention on the ground that under such reasoning "[e]very seller of chattels would in effect appoint the chattel his agent for service of process." (*Id.*, at p. 296.) However, the court held that foreseeability was relevant to the determination of minimum contacts. "[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." (*Id.*, at p. 297; accord Kulko v. California Superior Court (1978) 436 U.S. 84, 97-98; Shaffer v. Heitner, supra, 433 U.S. at p. 216.)

The court in *World-Wide Volkswagen* reasoned that when a defendant's conduct is such that he " 'purposefully avails [him-

self] of the privilege of conducting activities within the forum State,' " he is put on notice that he can be sued in the state. (*World-Wide Volkswagen, supra,* 444 U.S. at p. 297.) He can "alleviate the risk" by buying insurance, passing the potential litigation costs on to his customers, or curtailing his activities in the forum state. (*Ibid.*)

Thus, "if 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 pp. 297-298.)

The opinion in *World-Wide Volkswagen* distinguishes a local retailer or distributor, such as Seaway or World-Wide, from a major "manufacturer or distributor such as Audi or Volkswagen." (*World-Wide Volkswagen, supra,* 444 U.S. at pp. 297-298.) Although it was foreseeable that cars distributed by World-Wide and sold by Seaway would be driven to Oklahoma, neither Seaway nor World-Wide received a substantial financial benefit "by virtue of the fact that their products [were] capable of use in Oklahoma." (*Id.,* at p. 299.)

However, when a manufacturer "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" (*id.,* at p. 298), the manufacturer "benefits legally from the protection provided by the laws of the forum state for its products, as well as economically from indirect sales to forum residents." (DeJames v. Magnificence Carriers, Inc. (3d Cir. 1981) 654 F.2d 280, 285.) In such a situation, jurisdiction is reasonable because the manufacturer or distributor has invoked the benefits and protections of the forum's laws. (Nelson by Carson v. Park Industries, Inc. (7th Cir. 1983) 717 F.2d 1120, 1125-1126; *DeJames, supra,* 654 F.2d at p. 285; see also *International Shoe, supra,* 326 U.S. at p. 319.)

World-Wide Volkswagen's distinction between businesses that serve a local market and those that directly or "indirectly, through others," serve a broader market, has been explained as follows: "The two defendants in *World-Wide Volkswagen* who were not amenable to Oklahoma jurisdiction were at the end of the automobile's distribution system. The scope of the foreseeable market served by those defendants and of the benefits those defendants derived from the sale of the product was narrow. In contrast, the relevant scope is generally broader with respect to manufacturers and primary distributors of products who are at the start of a distribution system and who thereby serve, directly or indirectly, and derive economic benefit from a wider market. Such manufacturers and distributors purposely conduct their activities to make their products available for purchase in as many forums as possible. For this reason, a manufacturer or primary distributor may be subject to a particular forum's jurisdiction when a secondary distributor and retailer are not, because the manufacturer and primary distributor have intended to serve a broader market and they derive direct benefits from serving that market." (*Nelson, supra,* 717 F.2d at pp. 1125-1126; see also *DeJames, supra,* 654 F.2d at p. 286; *Rockwell Intern. Corp. v. Costruzioni Aeronautiche* (E.D.Pa. 1982) 553 F.Supp. 328, 332.)

In *Nelson,* the Seventh Circuit held that a Hong Kong manufacturer and a Hong Kong exporter of flannel shirts should reasonably have anticipated being haled into court in Wisconsin because their product was sold in the state and caused injury there. (*Nelson, supra,* 717 F.2d at pp. 1125-1127.) The manufacturer and the exporter argued that they were not subject to jurisdiction because they did not control the distribution of the product and were not responsible for the shirt's presence in Wisconsin. However, the court found that both defendants knew that they were introducing the product into the retailer's national distribution system. On the basis of this knowledge, the court held that the manufacturer and the exporter indirectly served and derived benefits from the national marketing of their product. Therefore, jurisdiction was proper under *World-Wide Volkswagen.* (*Nelson, supra,* 717 F.2d at pp. 1126-1127 & fn. 7.)

The stream of commerce theory approved in *World-Wide Volkswagen* has also been applied to component part manufacturers. (See *Rockwell, supra,* 553 F.Supp. 328; Volkswagenwerk, A.G. v. Klippan GmbH (Ala. 1980) 611 P.2d 498 [hereafter *Klippan*]; cf. Hedrick v. Daiko Shoji Co., Ltd., Osaka (9th Cir. 1983) 715 F.2d 1355.)[2] In fact, the court in *World-Wide Volkswagen* cited a component parts case, Gray v. American Radiator & Standard Sanitary Corp. (Ill. 1961) 176 N.E.2d 761, as support for the proposition that jurisdiction over a nonresident defendant is constitutional where the defendant "delivers its products into the stream of commerce with the expectation that they will be purchased in the forum State." (*World-Wide Volkswagen, supra,* 444 U.S. at p. 298.) As *Gray* illustrates, the stream of commerce theory is not relevant solely to manufacturers of finished products, but is equally applicable to manufacturers of component parts whose products are incorporated into finished products sold in the forum state. (See *Gray, supra,* 176 N.E.2d at p. 766; see also *Buckeye Boiler, supra,* 71 Cal.2d at pp. 902-903.)

The plaintiff in *Gray* sued an Ohio manufacturer, Titan Valve Manufacturing Company, for injuries sustained when a hot water heater containing a Titan safety valve exploded. The accident occurred in Illinois. The hot water heater was manufactured in Pennsylvania by American Radiator & Standard Sanitary Corp.

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[2] In *Hedrick,* the Ninth Circuit applied the stream of commerce theory to a foreign component part manufacturer that produced a splice used on an ocean-going carrier. The court held that jurisdiction was proper because "[t]he splice caused an injury . . . in a port that was within the expected service area of [the carrier's] customers." (*Hedrick, supra,* 715 F.2d at p. 1358.) The splice at issue in *Hedrick* was used, but not sold, in the forum state.

In contrast, the component parts in *Rockwell* and *Klippan* and the valve assemblies at issue here were sold in the forum state as part of finished products. Therefore, jurisdiction was proper under *World-Wide Volkswagen's* requirement that the manufacturer "deliver[ ] its products into the stream of commerce with the expectation that they will be *purchased* by consumers in the forum state." (*World-Wide Volkswagen, supra,* 444 U.S. at p. 298, emphasis added.) It is doubtful that the mere expectation of use in the forum is sufficient to establish minimum contacts under *World-Wide Volkswagen.*

and was sold to an Illinois consumer "in the course of commerce." (*Gray, supra,* 176 N.E.2d at p. 764.)

Titan neither sold the safety valve in Illinois nor delivered the valve into the state. Nevertheless, the court inferred that Titan's "commercial transactions" elsewhere resulted in a substantial purchase in Illinois of products containing Titan safety valves. Titan enjoyed a benefit, albeit indirect, from the protection of Illinois law vis-a-vis "the marketing of hot water heaters containing its valves." (*Id.,* at p. 766.) Therefore, Titan was subject to personal jurisdiction in Illinois. (*Id.,* at p. 767.)

III.

Each party to this dispute relies on *World-Wide Volkswagen* to support its position. Cheng Shin argues that the stream of commerce doctrine, approved in *World-Wide Volkswagen,* applies to Asahi as a manufacturer of component parts. Asahi, on the other hand, contends that there is no basis for jurisdiction in California other than the foreseeability that its product would enter the state. Asahi argues that such foreseeability is insufficient to establish jurisdiction under the rule in *World-Wide Volkswagen.*

Contrary to Asahi's assertions, the facts of this case are not analogous to the situation in *World-Wide Volkswagen.* In *World-Wide Volkswagen,* the car was sold in New York and driven to the forum state by the consumer. Its presence in the forum state was fortuitous. Asahi's valve assembly, on the other hand, was sold in the forum state as part of a finished product. It reached California in the stream of commerce. (See *World-Wide Volkswagen, supra,* 444 U.S. at p. 298; *Nelson, supra,* 717 F.2d at p. 1126; *Gray, supra,* 176 N.E. 2d at p. 766.) Therefore, the steam of commerce rule announced in *World-Wide Volkswagen* provides a possible basis for jurisdiction. (See *World-Wide Volkswagen, supra,* 444 U.S. at pp. 297-298.)[3]

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[3] The distinction between the foreseeability of use in the forum and the expectation of sale in the forum is critical to the rationale of *World-Wide Volkswagen.* (*Id.,* at pp. 296-298.) The dissent ignores this

Asahi has no offices, property or agents in California. It solicits no business in California and has made no direct sales here. However, Asahi's indirect business here, through Cheng Shin and others, is substantial. (See *ante,* p. C-2 [typed maj. opn. at pp. 2-3].) Moreover, Asahi knew that some of the valve assemblies sold to Cheng Shin would be incorporated into tubes sold in California.[4] Given the substantial nature of Asahi's indirect business

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distinction. (See dis. opn., *post,* at pp. C-20, fn. 1 [typed dis. opn. at pp. 1, 3].) Specifically, the dissent rejects the argument that jurisdiction is proper in light of Asahi's expectation that its products would be sold in California. (Dis. opn., *post,* at p. C-20 [typed dis. opn. at pp. 3-4] According to the dissent, such an argument mistakes foreseeability for intent and adopts the position advocated by Justice Marshall in his dissenting opinion in *World-Wide Volkswagen.* (Dis. opn., *post,* at p. C-20, fn. 1 [typed dis. opn. at p. 3].)

However, the majority in *World-Wide Volkswagen* specifically held that jurisdiction is proper where a corporation "delivers its products into the stream of commerce *with the expectation that they will be purchased by consumers in the forum State.*" (*World-Wide Volkswagen, supra,* 444 U.S. at pp. 297-298, emphasis added.) In contrast, Justice Marshall argued in his dissenting opinion that although the automobile at issue in *World-Wide Volkswagen* was not sold, but only used in the forum state, jurisdiction was proper because the nature of automobiles is such that defendants could have foreseen that a substantial portion of the cars they sold would travel outside New York. (*Id.,* at p. 314 (dis. opn. of Marshall, J.).)

Unlike Justice Marshall's dissent, today's decision is not based on a theory of foreseeability of use. Instead, jurisdiction is based on the finding that Asahi delivered its valve assemblies into the stream of commerce with the expectation that they would be incorporated into products sold to consumers in California.

[4] The affidavit of one of Cheng Shin's managers declares that "[i]n discussions with Asahi regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that Asahi was fully aware that valve stem assemblies sold to my company and to others would end up throughout the United States and in California." Asahi does not claim to have been unaware that some of its valve assemblies sold to Cheng Shin would be incorporated into tubes sold in California. Instead, it argues that "Asahi has never contemplated

with California, and its expectation that its product would be sold in the state, Asahi "should reasonably [have] anticipate[d] being haled into court [here]." (*World-Wide Volkswagen, supra*, 444 U.S. at p. 297.)

When Asahi sold valve assemblies to Cheng Shin with knowledge that they would be placed in tubes sold in California, it purposefully availed itself of the California market and the benefits and protections of California's laws. (Plant Food Co-op v. Wolfkill Feed & Fertilizer (9th Cir. 1980) 633 F.2d 155, 159-160; *Nelson, supra,* 717 F.2d at p. 1126; *Gray, supra*, 176 N.E.2d at p. 766; cf. *DeJames, supra*, 654 F.2d at p. 285.)[5]

Although Asahi did not design or control the system of distribution that carried its valve assemblies into California, Asahi was aware of the distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components. (See *Nelson, supra*, 717 F.2d at pp.

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that its limited sales of tire valves to Cheng Shin in Taiwan would subject it to lawsuits in California."

[5] The dissent relies on a percentage of income approach to argue that Asahi did not purposefully avail itself of the California market. The dissent speculates that sales of valve assemblies incorporated in Cheng Shin's California-bound products represented no more than .25 percent of Asahi's gross income. However, the numerical corollary to this "miniscule" percentage is the sale of 270,000 Asahi valve assemblies in California in the years 1978 through 1982.

Although this numerical corollary, like the dissent's income percentage, is based on "sheer speculation," Cheng Shin also presented evidence that at least 18 percent of the tubes sold in a particular California motorcycle supply shop contained Asahi valve assemblies. (See *ante*, at p. C-2, fn. 1 [typed maj. opn. at p. 3].) The trial court could reasonably have inferred that this percentage reflected the percentage of Asahi valves found in tubes sold throughout the state. A statewide presence of this magnitude does not constitute the sort of "isolated occurrence" that the court in *World-Wide Volkswagen* found would be an insufficient basis for jurisdiction. (See *World-Wide Volkswagen, supra*, 444 U.S. at p. 297.) As the trial court held, the declarations filed in this case established "a volume of Asahi tire valves in this jurisdiction sufficient to indicate that Asahi's availing itself of this market was not an isolated occurrence."

1126-1127.) Thus, Asahi's contacts with the state are sufficient to permit California, consistent with the requirements of due process, to exercise jurisdiction over Asahi in an action arising from those contacts.[6]

However, Ashai argues that jurisdiction is constitutionally improper here because Asahi did not "purposefully avail[ ] itself of the privilege of conducting activities within the forum State." (*Hanson, supra,* 357 U.S. at p. 253.) According to Asahi, the stream of commerce theory approved in *World-Wide Volkswagen* is not applicable unless the defendant actively attempts to exploit the forum's market. For example, the defendant might either develop an indirect marketing scheme to serve the forum state, or design its product with an eye toward compliance with the forum's rules and regulations.[7]

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[6] Since Cheng Shin's action against Asahi arises from Asahi's forum-related activity, this court need not decide whether Asahi's contact with the state "reaches such extensive or wide-ranging proportions as to make [it] sufficiently 'present' in the forum state to support jurisdiction over it concerning causes of action which are unrelated to that activity." (*Buckeye Boiler, supra,* 71 Cal.2d at pp. 898-899; see also *ante*, at p. C-3 [typed maj. opn. at pp. 4-5].)

[7] In a related argument Asahi relies on the statement in Hanson v. Denckla that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." (357 U.S. at p. 253.) Asahi contends that Cheng Shin's sale of tubes in California constituted such "unilateral activity." This argument ignores the plain import of the stream of commerce theory adopted in *World-Wide Volkswagen.*

By definition, in a stream of commerce case the defendant neither sells the product in the forum state nor ships the product into the state. The sale is necessarily made by another entity. Nevertheless, the defendant is subject to jurisdiction because it delivers its products into the stream of commerce "with the expectation that they will be purchased by consumers in the forum State." (*World-Wide Volkswagen, supra,* 444 U.S. at p. 298.) Such a defendant purposefully avails itself of the benefits and protections of the forum's laws and derives an economic benefit from indirect sales to forum residents. (See *Nelson, supra,* 717 F.2d at pp. 1125-1126; *DeJames, supra,* 654 F.2d at p. 285; *Plant Food Co-op, supra,* 633 F.2d at p. 159; see also *World-Wide*

Ashi's argument misreads *World-Wide Volkswagen*. The court in *World-Wide Volkswagen* held that the due process clause "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." (*World-Wide Volkswagen, supra,* 444 U.S. at p. 297.) The court described the function of the "purposefully avails" requirement as follows: "When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' [citation], it has clear notice that it is subject to suit [in the forum], 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." (*Ibid.*)

That requirement is satisfied where, as here, a component parts manufacturer intentionally sells its products to another manufacturer, knowing that the component parts will be incorporated into finished products sold in the forum state. In such a situation, the component part manufacturer can structure its conduct to protect itself from the risk of liability in the forum state.

World-Wide Volkswagen did not require that the defendant endeavor to market its products in the forum state. It required only that the defendant "delivers its products into the stream of commerce with *the expectation* that they will be purchased in the forum State." (*World-Wide Volkswagen, supra,* 444 U.S. at p. 298, emphasis added.) In stating this requirement, the court relied on *Gray, supra,* 176 N.E.2d 761. In *Gray,* the nonresident component part manufacturer was subjected to jurisdiction in the forum state on the ground that it received a benefit when products incorporating its parts were sold in the forum. (*Id.,* at p. 766; see *ante,* at p. C-8-9 [typed maj. opn. at pp. 13-14].) The defendant in *Gray* made no efforts to serve the forum's market other than

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Volkswagen, supra, 444 U.S. at pp. 297-298.) Therefore, jurisdiction is based on the defendant's forum-related activity, not on the "unilateral activity" of other participants in the chain of distribution. Neither the defendant in *Hanson* nor the defendants in *World-Wide Volkswagen* engaged in such forum-related activity. (See *Hanson, supra,* 357 U.S. at pp. 251-254; *World-Wide Volkswagen, supra,* 444 U.S. at p. 298.)

selling its parts to a manufacturer in "contemplation" of their consumption in the forum. (*Ibid.*)

In *Nelson, supra,* 717 F.2d 1120, the Seventh Circuit addressed the issue presented here—whether knowledge of the distribution system satisfies the expectation requirement of *World-Wide Volkswagen.* (*Nelson, supra,* 717 F.2d at p. 1126, fn. 7.) The court in *Nelson* held that a foreign manufacturer or distributor need not originate or control the distribution system that brought its product into the retailer's nationwide market. (*Id.,* at p. 1126; see *ante,* at p. C-7 [typed maj. opn. at pp. 11-12].) "[A] critical fact is whether those defendants were aware of that distribution system. If they were aware, they were indirectly serving and deriving economic benefits from the national retail market established by [the retailer], and they should reasonably anticipate being subject to suit in any forum within that market where their product caused injury." (*Ibid.;* see also *Plant Food Co-op, supra,* 633 F.2d at pp. 159-160.)

Asahi relies on two cases which involve manufacturers who were more actively involved than Asahi in serving the forum's markets. (See *Rockwell, supra,* 553 F.Supp. 328; *Klippan, supra,* 611 P.2d 498.) However, neither case holds that an expectation of sales in the forum is insufficient contact under *World-Wide Volkswagen.* Therefore, neither case is inconsistent with *Nelson.*

In *Rockwell,* the federal district court held a foreign component part manufacturer subject to jurisdiction in Pennsylvania on the ground, inter alia, that its component was custom-designed for a foreign manufacturer who served the European and American markets. (*Rockwell,* supra, 553 F.Supp. at pp. 333-334.) In *Klippan,* the Alaska Supreme Court held that a foreign seat belt manufacturer was subject to jurisdiction in the state because it designed its product in anticipation of American sales and had knowledge that its product would be incorporated in cars sold throughout the United States. (*Klippan, supra,* 611 P.2d at p. 501.)

Of course, *Nelson* is not binding on this court, nor are *Rockwell* and *Klippan.* The rule in *Nelson,* however, is consistent with *World-Wide Volkswagen's* statement that jurisdiction is permissi-

ble under the stream of commerce theory where the defendant expects its products to be sold in the forum state. (*World-Wide Volkswagen, supra,* 444 U.S. at pp. 297-298.) Absent such a rule, a major manufacturer who benefits greatly from the sale of a substantial number of its products in California could nevertheless avoid the jurisdiction of the California courts. Therefore, this court finds that the minimum contacts requirement is satisfied where, as here, the manufacturer is aware that a substantial number of its products will be sold in the forum state.

However. the finding that Asahi's contacts with California are sufficient to satisfy the minimum contacts test does not conclude the inquiry. If minimum contacts exist, the due process clause also requires this court to determine whether jurisdiction is fair and reasonable. (*World-Wide Volkswagen, supra,* 444 U.S. at p. 292; *Secrest, supra,* 33 Cal.3d at p. 672; *Buckeye Boiler, supra,* 71 Cal.2d at p. 899.) The court must balance "the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction." (*Buckeye Boiler, supra,* 71 Cal.2d at p. 899; accord *Secrest, supra,* 33 Cal.3d at p. 672.)[8]

Asahi argues that California has no interest in exercising jurisdiction here because the California plaintiffs did not name

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[8] In light of the heavy emphasis on defendant-forum contacts in *World-Wide Volkswagen,* the continuing relevance of the fairness determination is unclear. For example, one commentator has noted that having found defendant's contacts sufficient to meet the requirements of *World-Wide Volkswagen,* a court is unlikely to rule that jurisdiction is unreasonable. (Note, *World-Wide Volkswagen Corp. v. Woodson: Minimum Contacts in a Modern World* (1981) 8 Pepperdine L.Rev. 783, 795, fn. 71, 803 & fn. 111.)

Although the court in *World-Wide Volkswagen* noted the relevance of the fairness considerations, i.e., the convenience of the parties and the interest of the forum state (*World-Wide Volkswagen, supra,* 444 U.S. at p. 292), it did not apply these considerations to the case at hand. Instead, the court focused on the defendants' conduct and held that conduct insufficient to establish the requisite minimum contacts. (*Id.,* at pp. 297-299.)

Asahi as a defendant. According to Asahi, California has no interest in adjudicating an indemnity dispute between two foreign manufacturers.[9] However, "[t]he fact that the party seeking indemnity or contribution is a foreign corporation rather than the original injured plaintiff is not a justification for immunizing an ultimately responsible party from liability under the laws of the state where the injury occurred. . . ." (*Klippan, supra,* 611 P.2d at p. 502.) California's interest is not as strong here as it would be if it were directly providing "an effective means of redress for its residents." (McGee v. International Life Ins. Co., *supra,* 355 U.S. at p. 223.) Nevertheless, California's interest in asserting jurisdiction over Asahi in this action is substantial.

First, California has a strong interest in protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards. (See *Hedrick, supra,* 715 F.2d at p. 1359.) Second, from the standpoint of the orderly administration of its laws, California has an interest in assuming jurisdiction where, as here, "most of the evidence, testimonial and otherwise, is within its borders . . . ." (*Buckeye Boiler, supra,* 71 Cal.2d at p. 899; *Secrest, supra,* 33 Cal.3d at p. 672.) Finally, Cheng Shin has named numerous defendants in its cross-complaint. Thus, there is a possibility of inconsistent verdicts if Asahi cannot be sued in California with the other cross-defendants. Both Cheng Shin and California have an interest in preventing "multiple and possibly conflicting adjudications." (*Buckeye Boiler, supra,* 71 Cal.2d at p. 900.[10]

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[9] Subsequent to the filing of the petition for hearing herein, plaintiffs' complaint was dismissed with prejudice, presumably pursuant to a settlement. The cross-complaints were not dismissed. Asahi asks this court to take judicial notice of the dismissal pursuant to Evidence Code sections 452 and 459. Asahi's request for judicial notice is hereby granted. However, the dismissal has no bearing on the propriety of California's exercise of jurisdiction over Asahi.

[10] Contrary to the dissent's assertion, California's interest in this litigation did not evaporate when plaintiffs dismissed their action with prejudice. (See dis. opn., *post,* at p. C-21 [typed dis. opn. at p. 4].) The cross-complaints in this action are still pending in California. Although plaintiffs have been compensated, the California courts have not yet

Asahi presents no evidence to support its contention that it would be inconvenienced if it is subjected to California's jurisdiction. Presumably, its inconvenience would stem from the inherent burden of litigation in a foreign country. However, this inconvenience does not outweigh California's interest in asserting jurisdiction or Cheng Shin's interest in litigating all its claims in California. Therefore, California's exercise of jurisdiction over Asahi in this action is fair and reasonable.

IV.

For over 10 years, Asahi has profited from its business relationship with Cheng Shin. This relationship has resulted in Asahi's sale of 1,350,000 valve assemblies. Cheng Shin does a substantial business with the United States, particularly with California, and Asahi knew that its valve assemblies would be incorporated into tubes sold by Cheng Shin in California.

Thus, Asahi introduced its products into the stream of commerce with the expectation that they would be sold in California. This conduct satisfies the constitutional requirement of minimum contacts with the forum state. Moreover, jurisdiction in California is fair and reasonable given California's interest in protecting its consumers, and the interests of California and Cheng Shin in avoiding inconsistent results and a multiplicity of litigation. Ac-

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determined how liability will be apportioned. For this purpose, California has an interest in asserting jurisdiction over Asahi. Apart from providing a forum to California plaintiffs to ensure that they are compensated, California has an interest in enforcing its safety standards and in deterring Asahi and other foreign manufacturers from shipping defective products into the state.

Moreover, California's interest in enforcing its safety standards is not diminished because plaintiffs "showed no interest in Asahi" (dis. opn., *post,* at p. C-21 [typed dis. opn. at p. 4].). Due to the cost and complexity of effecting service on a foreign defendant, plaintiffs may have made a strategic decision not to pursue Asahi, particularly in light of the numerous domestic defendants who were potentially liable for plaintiffs' injuries. Finally, the fact that Cheng Shin waited a year to file its cross-complaint against Asahi and others is not relevant to California's interest in asserting jurisdiction over Asahi.

cordingly, the trial court's order denying Asahi's motion to quash service of summons was proper. The petition for writ of mandate is denied and the alternative writ is discharged.

BIRD, C.J.

WE CONCUR;

KAUS, J.
BROUSSARD, J.
REYNOSO, J.
GRODIN, J.

ASAHI METAL INDUSTRY CO., LTD.
V.
SUPERIOR COURT
S.F. 24657
DISSENTING OPINION BY LUCAS, J.

I respectfully dissent. The Supreme Court of the United States has authoritatively stated that a foreign corporation's knowledge or foreseeability that its product will be used in another state is not sufficient to subject it to in personam jurisdiction. The corporation must purposefully avail itself of the privilege of conducting activities in the forum sate. (World-Wide Volkswagen Corp. v. Woodson (1980) 444 U.S. 286, 295-297.) The court stated, "If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there." (*Id.* at p. 296.) Speaking to stream-of-commerce situations, the court explained that a corporation may be subjected to jurisdiction where the sale "arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, . . . " (*Id.* at p. 297.) In contrast, "the mere 'unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.' " (*Id.* at p. 298, quoting Hanson v. Denckla (1958) 357 U.S. 235.)

The burden was on Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin) to establish by competent evidence that in personam jurisdiction existed over Asahi Metal Industry Co., Ltd. (Asahi). (Messerschmidt Development v. Crutcher Resources (1978) 84 Cal.App.3d 819, 825.) To my mind Cheng Shin has not carried that burden. Nowhere is it claimed that Asahi had *any* direct contact with California and no evidence supports the assertion that Asahi intended to serve the California market indirectly. Cheng Shin neglected to indicate what percentage of its total sales are made in the United States, but even assuming that Cheng Shin made 100 percent of its sales in this country, Asahi would have derived no more than .25 percent of its revenues from Cheng Shin's California sales. Cheng Shin presented evidence that other tire manufacturers sell tires in California that incorporate Asahi valves but there is no indication of the number of such tires or what percentage of Asahi's total

revenues are represented by such tires. Even assuming that Asahi derives 10 times as much of its revenues from other manufacturers' California sales as from Cheng Shin's, a matter of sheer speculation, Asahi would only receive 2.5 percent of its total revenue from California. This miniscule percentage belies any suggestion that Asahi intended to serve the California market indirectly. The assertion that Asahi "knew" that its valves were destined for California is predicated on a slender reed—*Cheng Shin's* manager's second-hand understanding. It seems beyond controversy to me that Asahi at best foresaw that some valves would be sold in California but it in no way purposefully availed itself of conducting business in California nor exerted any effort to serve the California market. Under the teaching of *World-Wide Volkswagen Corp.*, then, I would find that California cannot assert in personam jurisdiction over Asahi.

Nonetheless, the majority opinion argues that Asahi's indirect business in California is substantial. (*Ante,* p. C-10 [maj. opn. at p. 15].) The opinion next equates Asahi's knowledge that some of its valves would eventually be sold in California with proof that Asahi purposefully availed itself of the benefit of California's laws.[1] The majority concludes, based on those predicates, that Asahi reasonably should have anticipated being hailed into court in California and that California may properly exercise jurisdiction over Asahi. (*Ante,* p. C-10-11 [maj. opn. at p. 16].)[2] I do not find that analysis persuasive.

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[1] The majority's approach confusing foreseeability with intent and hence finding efforts to serve the forum's market, is similar to that posited by Justice Marshall's dissent in *World-Wide Volkswagen Corp.* and, obviously, rejected by the majority of the Supreme Court. (See *World-Wide Volkswagen, Corp.*, supra, 444 U.S. at p. 313 (dis. opn. of Marshall, J.).)

[2] Gauging the propriety of asserting jurisdiction by whether the party should reasonably expect to be hailed into court in the forum is noted in *World-Wide Volkswagen Corp.* but not exclusively relied upon and results in a logical vicious circle. If a forum routinely asserts jurisdiction, foreign parties will expect to be hailed into court there. The more parties expect to be hailed into court, the greater the propriety of the forum's assertions.

Finally, even assuming that minimal contacts exist, I dissent from the conclusion that California may fairly and reasonably exercise jurisdiction. The majority notes that California has an interest in enforcing its safety standards, that most of the evidence is in California, and that the presence of other cross-defendants raises the danger of inconsistent judgments should the Cheng Shin/Asahi dispute be litigated elsewhere. Whatever interest California may have had in asserting jurisdiction over Asahi to enforce its safety standards evaporated when the California plaintiffs settled with all defendants. Even before settlement the California plaintiffs showed no interest in Asahi. Plaintiffs never sought to serve Asahi as an additional defendant although it must have been apparent by August 1982 at the latest that Asahi was potentially liable. Further, Cheng Shin waited over a year from the date it was served with the complaint before cross-complaining against Asahi.

True, the evidence is in California but the principal evidence bearing on Asahi's liability must be the motorcycle tire, an item easily transported to the eventual forum. Although other cross-defendants do remain, Asahi and Cheng Shin presumably entered into a sales contract which may contain terms that are unenforceable in California but which are proper under the laws of Japan or Taiwan. Certainly they did not expect their relationship, *inter se,* to be governed by California. Any disadvantage to the other cross-defendants is balanced by the disadvantage of having California law applied, essentially randomly, to the dispute between Asahi and Cheng Shin.

The net result of the majority's decision is that a Taiwanese corporation can litigate in California against a Japanese corporation that has absolutely no connection with California in a case in which the California plaintiffs have declared themselves made whole. Surely our overburdened courts should be concerned with disputes that more directly involve California.

I would issue the writ.

LUCAS, J.

I CONCUR:
MOSK, J.