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World-Wide Volkswagen v. Woodson-The Rest of the Story

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I. THE ACCIDENT

Lloyd Hull knew he had a serious drinking problem. Ever since his retirement from the Navy two years before, it seemed as though he needed to get a little high, or better, every day. After getting off work on September 21, 1977, in Berryville, Arkansas, Lloyd was on his way to visit his older sister in Okarche, Oklahoma. Next to the bottle of Jim Beam on the front seat was a loaded .22 Magnum pistol for shooting jack rabbits on his sister's farm. Lloyd was driving a 1971 Ford Torino he had bought just the week before, paying $500 down. It had a large V-8 engine, good tires and brakes, and was in perfect working condition.¹

As he drove along, Lloyd took shots from the bottle of bourbon. After passing through Tulsa around nightfall, he relaxed as he got on the Turner Turnpike that runs to Oklahoma City. He was not in any particular hurry to get to his sister's place, and he was not paying attention to his speed. Later he assumed he must have been driving too fast on account of the liquor. Lloyd did not notice the small car ahead of him until he was nearly on top of it. By the time he managed to hit

his brakes, it was too late to avoid the car. His Torino slammed into
the other car, a little off center on the driver's side. Lloyd saw the
small car continue down the road for a few seconds after the collision,
come to a stop, and then catch on fire. Lloyd pulled over and watched
the small car burn, but he did not get out of his Torino. He noticed
that the needle on his speedometer was jammed at seventy-five miles
per hour.2

Harry Robinson suffered from arthritis. During the long winters
in Massena, New York, a small town on the St. Lawrence Seaway next
to Canada, his ankles and knees would swell up and bleed so badly
that he had to stay in bed for two or three months at a time. His doc-
tor had told him he needed a dry, warmer climate, and so he and his
wife, Kay, had sold their restaurant and were moving to Tucson, Ari-
izona with their three children. Kay was driving the 1976 Audi 100 LS
that she and Harry had purchased new the year before from Seaway
Volkswagen in Massena. Their daughter, Eva, age thirteen, and oldest
son, Sam, sixteen, rode with her. Harry had rented a U-Haul truck for
the furniture, and he and their other son, Sidney, age fifteen, were
riding in the truck about fifty yards ahead of the Audi.3

Sam was in the front seat of the Audi, and he was the first to see
the approaching headlights through the rear window. Sam yelled to
his mother that the car behind was going to hit them, and as Kay
looked in her rearview mirror, the Torino crashed into the back of the
Audi.4

Sam saw the fire start in the area over the rear seat right after they
were hit. Kay took her foot off the gas pedal and pulled the car off to
the side of the road and put it in park. The fire covered the area above
the rear seat and was spewing out gray sooty smoke. The blaze spread
quickly over the rear seat, and the inside of the car got hot rapidly.
Sam and Kay both tried to open their front doors but could not open
either of them even though the doors were not locked. Somehow they
had been jammed shut by the collision. Sam and Kay tried the rear
doors, but they were jammed, too. Eva jumped from the back into the
front seat. By that time flames were shooting out of the space where
the seat back and the bottom cushion met in the rear seat. All the
windows were rolled up, except for the side vent on Kay's side, and
none of them would open either. Kay, Eva, and Sam were trapped.5

By the time they tried to open all the doors and windows, the fire

2. Id.
3. Deposition of Harry Robinson, Robinson v. Volkswagen of Am., Inc., No. C-77-
100, transcript at 18-20, 40, 48-49 (Creek County Dist. Ct., Okla., taken Dec. 30,
1977).
4. Deposition of Kay Robinson, Robinson v. Volkswagen of Am., Inc., No. C-77-100,
transcript at 14-15 (Creek County Dist. Ct., Okla.).
5. Id. at 16-20.
had spread to the front of the car. Kay lay down on the front seat and tried to kick out the side window, but could not. The car was full of smoke and she could not see anything. Sam tried desperately to break the window with his fist. Kay heard people moving outside the car, but she could not see them. She heard Eva's hair catch on fire; it sounded like a torch.6

Harry Robinson noticed the Audi's headlights moving back and forth in the side mirrors of the U-Haul truck. His son, Sidney, looked out the right mirror and saw the flames ignite. He said "That's Mama's car," and Harry pulled over and got out of the cab. The Audi was moving toward them sliding sideways, and fire and smoke were coming out of the trunk. The Audi came to a stop and rolled backwards onto the grass by the side of the road. Due to his arthritis, Harry was only able to hobble toward the car and Sidney reached it first. Harry tried to open the doors on the driver's side, and then moved around the car to try the doors on the other side. When he reached the passenger side, the rear window blew out, and the fire seemed to erupt at the back of the car. Harry could see his family struggling inside. Sam appeared to be banging his head against the window, trying to break out. Meanwhile, Sidney was pounding on the outside of the windshield with his fist. Just when it seemed that Kay, Eva, and Sam would never get out of the car alive, a hero came to their rescue.7

Mike Miller first noticed the Ford Torino when he passed it on the right. As he looked over at the driver, Mike could tell he was drunk. At a curve further down the highway, the Torino nearly came to a stop and nearly went off the road, but it got back on the highway, practically running over some barrels beside the road. Then it picked up speed and passed Mike. A short time later Mike saw a ball of fire. He immediately stopped and ran over to the burning Audi, leaving his car door open and the engine running.8 As he ran, he thought perhaps he should have driven back to the tollgate at the entrance to the Turner Turnpike to report the accident instead of trying to help the people in the burning car himself.9

By the time Mike reached the Audi, the passenger compartment was engulfed in flames and filled with smoke. All he could see inside were two dark figures moving around, but he could hear people in the car screaming and banging on the windows. Sidney was not doing any good beating on the windshield with his fist, so Mike pushed him aside and kicked at the windshield. As it started to cave in, he gave it an-

6. Id.
other push and knocked a big hole through the windshield on the pas-

genger side.10

The fire was so intense by now that it looked as if there were a

flame thrower in the back of the car with the blaze swirling around

and concentrated on the driver's side. As flames curled around

the hole that Mike had made in the windshield, two arms appeared. Mike

reached down to grab Sam's arms above the elbows, but Mike's hands

slipped off the burning flesh. He grabbed Sam again, this time by the

wrists, and pulled his head and shoulders through the hole. While

Mike dragged Sam off the hood of the car, another man on the scene,

Etsel Warner, pulled Eva through the hole.11

The fire continued to burn furiously, and Mike could not see any-

one else through the thick black smoke in the car. Then he heard

Harry yell, "Get my wife out of there." Mike looked through the hole

and a hand suddenly appeared reaching through the smoke and

flames. Kay had felt Sam and Eva go out of the car, and when nobody

reached in for her, she figured that she must be on the wrong side.

She moved over to the other side of the car and stuck her hand out.

Mike grabbed her wrist and pulled as hard as he could. Luckily, Kay

weighed only 98 pounds, and she practically flew through the hole and

out of the inferno.12

Mike helped the three victims move away from the burning car. After
taking only a couple of steps, Mike heard a small explosion from

inside the car. Mike did not look back, but kept walking, only faster,

and he got the three victims to lie down. Kay and Eva had been wear-
ing polyester blouses, which had melted and were stuck to their

bodies.13

The highway patrol arrived on the scene, then the fire department,

and finally an ambulance. Highway Patrol Trooper Spencer walked to

the Ford Torino to question Lloyd Hull, who had a two inch gash on

his lower lip, but was otherwise unhurt. Since Mr. Hull was obviously

drunk, Trooper Spencer arrested him and took him to the hospital to

have his lip sewn up, and then to jail, where he remained for fourteen
days.14

Kay, Sam, and Eva Robinson all received severe burns. Sam suf-
faced first and second degree burns on his face, neck, upper back, and

arms. A nostril was burned, and he had a deep scar on his right cheek,

10. Deposition of Mike Miller, supra note 8, at 12-15.
11. Id. at 15-19.
12. Id. at 20-24.
13. Id. at 23, 26-28.
14. Deposition of Lloyd Hull, supra note 1 at 13-14. When Trooper Spencer arrived

on the scene, Mr. Hull, who had been examining the front of his car, turned to

him and said: "Well, I sure fucked up my car." Trooper Spencer felt like shooting

and keloid scars on his chin, arms, and hands. Because she had been in the burning car longer, Eva's injuries were more serious. She suffered third degree burns on her neck, shoulders, and arms. Her vocal chords were burned, and she required skin grafts on her back, shoulders, and right hand. Fortunately, though, Eva had covered her face, and it had not been burned as badly as it otherwise might have been. Both Sam and Eva were hospitalized for six weeks in Tulsa, and spent many months undergoing physical therapy and reconstructive surgery.\textsuperscript{15}

Since Kay Robinson had been trapped in the burning car the longest, her burns were the most horrible of all. She had burns on forty-eight percent of her body—thirty-five percent of which were third degree. Kay was in the intensive care unit for seventy-seven days and was hospitalized in Tulsa for another several months. She underwent thirty-four operations, all but two of which were under general anesthetic, for skin grafts and other reconstructive surgery. Most of her fingers were amputated, and she had severe scarring over the entire upper part of her body. Eva and Kay also suffered severe psychological trauma both from the ordeal and from their permanent disfigurement.\textsuperscript{16}

With his wife and children hospitalized, Harry Robinson began the process of seeking redress for their injuries. The effort was to continue for more than fifteen years in state and federal trial courts in Oklahoma, a federal trial court in Arizona, the Oklahoma Supreme Court, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court. Along the way the litigation would produce a landmark Supreme Court decision in the area of personal jurisdiction, \textit{World-Wide Volkswagen Corporation v. Woodson}.\textsuperscript{17}

II. FILING THE LAWSUIT

Harry Robinson first retained a Tulsa attorney named Charles Whitebook who brought in the Tulsa law firm of Greer and Greer, headed by two brothers who had specialized in personal injury litigation for many years. Jefferson Greer was the lead attorney, but his younger brother Frank devoted a significant amount of his time to the case as well. Mr. Greer was a prominent member of the personal injury plaintiffs' bar, having served as President of the Oklahoma Trial Lawyers Association in 1966 and as a Governor of The Association of Trial Lawyers of America in 1977. He had more than twenty years of experience trying personal injury cases and had handled some of the


\textsuperscript{16} \textit{Id}.

\textsuperscript{17} 444 U.S. 286 (1980).
earliest products liability cases in Oklahoma.\textsuperscript{18}

Lloyd Hull was an obvious defendant, but he had no liability insurance, and consequently any judgment the Robinsons could obtain against him would be uncollectible. To obtain an enforceable judgment, the Robinsons would have to sue the manufacturer of the Audi on a products liability claim. To prevail, they would need to establish that the Audi was defective and that its defects had caused their injuries.

At the time of the Robinsons' accident, the law of products liability was undergoing fundamental change in Oklahoma. Prior to 1974, a manufacturer's liability under Oklahoma law for injuries caused by a defective product could be based upon one of only two theories: negligence, or breach of express or implied warranties of the manufacturer.\textsuperscript{19} In 1974, the Oklahoma Supreme Court adopted a rule of strict liability for manufacturers for defects in their products in Kirkland v. General Motors Corporation,\textsuperscript{20} relying on section 402A of the Restatement (Second) of Torts. Thus, if the Robinsons could establish that the Audi was defective, its manufacturer would be strictly liable for their injuries, regardless of negligence.\textsuperscript{21}

The dollar amounts of jury verdicts in personal injury cases had been increasing dramatically during the 1970s.\textsuperscript{22} In February 1978, a California jury returned a verdict for $128.5 million in Grimshaw v. Ford Motor Company.\textsuperscript{23} There were a number of similarities between the Grimshaw case and the Robinson's case against the manufacturer of the Audi. In Grimshaw, the gas tank of a 1972 Ford Pinto exploded when the Pinto was "rear-ended" while stalled on a freeway. The driver died as a result of the fire, and Richard Grimshaw, a thirteen year old passenger, suffered severe burns on his face and entire body.\textsuperscript{24}

It was evident that there was the potential for the Robinsons to

\textsuperscript{19} See Kirkland v. General Motors Corp., 521 P.2d 1353, 1358-62 (Okla. 1974)(tracing development of products liability in Oklahoma).
\textsuperscript{20} 521 P.2d 1353 (Okla. 1974).
\textsuperscript{21} In 1976, a $150,000 verdict against Volkswagen of America (the importer of the Audi) was affirmed by the Oklahoma Supreme Court on a products liability claim involving a design defect in the Volkswagen ignition locking system. See Fields v. Volkswagen of Am., Inc., 555 P.2d 48, 63 (Okla. 1976).
\textsuperscript{22} See Larry Bodine, Million-Dollar Jury Awards, NAT'L L.J., Jun. 18, 1979, at 1 (survey showed an increase in the number of million dollar verdicts nationwide from fewer than 20 in 1973 to more than 50 in 1977).
\textsuperscript{23} 174 Cal. Rptr. 348, 389-392 (1981)(affirming trial court's reduction of $125 million punitive damages award to $3.5 million). The jury verdict awarded $2,516,000 compensatory damages and $125 million punitive damages to the severely burned passenger, Richard Grimshaw, and $559,680 compensatory damages to the heirs of the driver, Lilly Gray. Id. at 358.
\textsuperscript{24} Id.
recover a substantial, perhaps multi-million dollar verdict. The extent of their injuries, the pain and suffering, and the psychological trauma would surely win a jury's sympathy. On the other hand, the Oklahoma law of products liability was in its early stages of development, and there were a number of unsettled legal issues. The trial would be complicated by the need for testimony by experts in automotive engineering and safety, as well as the usual medical experts and experts on damages. Moreover, the German auto manufacturers had earned a reputation for being particularly aggressive defendants. While Mr. Greer realized at the outset that the case would be difficult to try, he could not have anticipated the extent of the obstacles he would encounter.

An aspect of the Robinsons' case that Mr. Greer immediately recognized as significant was the fact that the accident had occurred just a few miles outside of Tulsa County in Creek County,25 Oklahoma, making venue proper in Creek County.26 An oil boom had come to Creek County at the turn of the century, but had ended shortly after World War I, and it had been an especially depressed area during the 1930's.27 By the 1970's, Creek County was a blue collar community that had become known to personal injury lawyers throughout the state as being particularly sympathetic to personal injury plaintiffs. The attractiveness of Creek County as a plaintiffs' venue was and is demonstrated by the numerous change of venue cases that have originated there.28 Mr. Greer regarded Creek County as one of the best venues in which to try a personal injury lawsuit in the United States.29 He rated it on a par with Dade County, Florida, or Cook County, Illinois,30 both notoriously high-verdict jurisdictions, and he estimated that a case in Creek County was worth twice as much as it would be in Tulsa County.

Mr. Greer knew he needed to be prepared for the defendants' attempt to defeat venue in Creek County through removal of the case to the United States District Court for the Northern District of Oklahoma in Tulsa, a standard defense strategy in cases involving

25. Creek County is adjacent to Tulsa County.
26. See OKLA. STAT. tit. 12, § 141 (1991)(providing for venue in automobile accident cases "[i]n any county where the damages or a part thereof were sustained"). The cars had just left Tulsa County when the accident occurred.
30. Letter from Jefferson G. Greer, Attorney, to Russell J. Weintraub, Professor in Civil Jurisprudence, The University of Texas at Austin School of Law 1 (Nov. 9, 1983)(on file with the University of Nebraska College of Law Library).
nonresident defendants. Since the Robinsons had been citizens of New York, he would have to name defendants who were also citizens of New York to destroy diversity of citizenship and thereby block removal. After verifying that Seaway Volkswagen, Inc., the car dealer from whom the Robinsons had purchased the Audi, was incorporated in and had its principal place of business in New York, Mr. Greer named Seaway Volkswagen as one of the defendants in the case. He also named World-Wide Volkswagen, Inc., the distributor which supplied the Audi to Seaway Volkswagen, as another defendant. World-Wide Volkswagen was also a citizen of New York, since it was incorporated there. The other defendant originally named in the case was Volkswagen of America, Inc., which had imported the Audi from Germany and was a citizen of New Jersey.31

Mr. Greer filed separate petitions on behalf of each of the Robinsons in the Bristow Division of the District Court of Creek County on October 18, 1977. The Presiding Judge was Charles S. Woodson. Each of the petitions alleged a single cause of action for products liability based on defects in the design and location of the Audi's gas tank.32

On May 23, 1978, Mr. Greer filed amended petitions in which he added Volkswagenwerk Aktiengesellschaft (Volkswagen of Germany) as a defendant. At the time Mr. Greer understood that Volkswagen of Germany had manufactured the Audi. He later was informed through a conversation with defense counsel and in responses to his interrogatories that the manufacturer of the Audi was Audi NSU Auto Union Aktiengesellschaft (Audi NSU). Accordingly, on June 14, 1978, he obtained an order substituting Audi NSU for Volkswagen of Germany as the defendant manufacturer. The correct identity of the Audi's manufacturer would later become a crucial issue in the case.33

Volkswagen of Germany, Volkswagen of America, and Audi NSU were affiliated companies, and all were represented in the United States by the prestigious Wall Street law firm of Herzfeld and Rubin.34 Rhodes, Hieronymus, Holloway and Wilson, a Tulsa law firm specializing in insurance defense, was retained as local counsel. Bert Jones, a senior partner at Rhodes, Hieronymus, took charge of the case in Tulsa. Separate counsel were needed for the other defendants, World-Wide and Seaway Volkswagen, and Mr. Jones recommended Tulsa lawyers, Mike Barkley and Dan Rogers, respectively, to repre-

32. Id. at 29-30, 32.
33. See infra notes 167-180 and accompanying text.
sent them.\textsuperscript{35}

Mike Barkley was twenty-nine years old at the time, and he had recently set up his own office. Before that, he had been an associate for several years at Rogers, Rogers and Jones, an insurance defense firm in which Dan Rogers was a named partner. Having been on his own for only a short while, Mike was thrilled to get the call from Mr. Jones concerning the case, and he was eager to defend his new client, World-Wide Volkswagen.\textsuperscript{36}

Volkswagen of America, World-Wide and Seaway Volkswagen each filed special appearances to contest jurisdiction in Oklahoma and venue in Creek County, and after a hearing on December 21, 1977, Judge Woodson overruled their special appearances.\textsuperscript{37} Harry Robinson's deposition was taken on December 30, and the defendants learned that prior to the accident he and Kay Robinson had sold their home and business in New York and had already purchased a new home in Arizona.\textsuperscript{38} On January 5, 1978, the defendants joined in a petition for removal to the United States District Court for the Northern District of Oklahoma, claiming that the Robinsons were no longer citizens of New York, and consequently, federal subject matter jurisdiction existed based on diversity of citizenship.\textsuperscript{39}

Mr. Greer responded with a motion to remand in which he contended that although the Robinsons were in the process of changing their citizenship, they did not become citizens of Arizona until arriving there after their release from the hospital in Tulsa.\textsuperscript{40} He argued that when their petition was filed in Creek County,\textsuperscript{41} the Robinsons were still citizens of New York,\textsuperscript{42} like World-Wide Volkswagen and Seaway, and thus there could be no federal subject matter jurisdiction based on diversity of citizenship.

Claire Eagan had been the law clerk for Allen E. Barrow, the chief federal judge in the Northern District of Oklahoma, since graduating

\textsuperscript{35} Interview with Mike Barkley, Attorney (Apr. 10, 1991).
\textsuperscript{36} Id.
\textsuperscript{37} Order Overruling Motions to Quash and Plea to the Jurisdiction, Appendix, Petition for a Writ of Certiorari at 13-14, World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1980)(No. 78-1078).
\textsuperscript{40} See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 16 (1969)("To acquire a domicil of choice in a place, a person must be physically present there").
\textsuperscript{41} Cf. Mann v. City of Tucson, Dep't of Police, 782 F.2d 790, 792 (9th Cir. 1986)("Existence of diversity jurisdiction is determined by the citizenship of the parties at the time of the filing of the complaint, not at the time the cause of action arose or after the action is commenced.").
\textsuperscript{42} RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 19 (1969)("A domicil once established continues until it is superseded by a new domicil.").
in 1976 from Fordham University School of Law. One of her last assignments for Judge Barrow before entering private practice in 1978 was the Robinsons' motion to remand to Creek County. Ms. Eagan's research supported Mr. Greer's position, and she drafted Judge Barrow's order remanding the case to Creek County.\footnote{Order, Robinson v. Volkswagen of Am., Inc., No. 78-C-7-B (N.D. Okla., filed Mar. 14, 1978).}

Ms. Eagan left her employment with Judge Barrow at the end of April, 1978, and on the following Monday began work at Hall, Estill, Hardwick, Gable, Collingsworth and Nelson, the largest law firm in Tulsa. By coincidence, Mike Barkley joined the Hall, Estill firm on the same day. On the first day in their new jobs, Mr. Barkley appeared in Ms. Eagan's office, dropped the World-Wide Volkswagen file on her desk, and told her that she was now assigned to assist him with getting World-Wide Volkswagen out of the state court action.\footnote{Claire V. Eagan, Lecture, The University of Tulsa College of Law (Oct. 17, 1989)(videotape on file with the University of Nebraska College of Law Library).}

III. THE BATTLE OVER JURISDICTION

Since removal had not been successful, World-Wide Volkswagen's only way to avoid trial in Creek County was by establishing that Oklahoma lacked personal jurisdiction over the company. On January 5, 1978, the same day the defendants had filed the petition for removal, World-Wide Volkswagen and Seaway Volkswagen had filed separate motions for Judge Woodson to reconsider his order overruling their special appearances.\footnote{Motion to Reconsider, Robinson v. Volkswagen of America, Inc., No. C-77-100 (Creek County District Ct., Okla., filed Jan. 5, 1978).} No action had been taken on the motions to reconsider while the case was in federal court, but once it was

\footnote{Ms. Eagan's representation of World-Wide Volkswagen was not prohibited under DR 9-101 of the Code of Professional Responsibility, which was in effect in Oklahoma at the time. By the time Mr. Barkley requested her to work on the case, the matter had been remanded to state court, and the case did not return to federal court until after World-Wide Volkswagen had been dismissed from the case. Moreover, as Judge Barrow's law clerk, she neither acted upon the merits of the case nor had substantial responsibility for it. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 9-101(A)(1980)(prohibiting a lawyer from accepting private employment "in a matter upon the merits of which he has acted in a judicial capacity"); DR 9-101(B)(prohibiting a lawyer from accepting private employment "in a matter in which he had substantial responsibility while he was a public employee"). The provisions of Rule 1.12 of the Model Rules of Professional Responsibility, which are now in effect in most jurisdictions, are somewhat broader and may have prohibited Ms. Eagan from working on the World-Wide Volkswagen case if they had been in effect at the time. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.12 (1983)(prohibiting a lawyer from representing "anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or...law clerk... , unless all parties to the proceeding consent after consultation").}
remanded to Creek County, Mike Barkley had the motions set for rehearing and sent Claire Eagan to handle the argument. It was the first motion she had ever argued.46

In 1978, Oklahoma had two long-arm jurisdiction statutes that permitted its courts to exercise jurisdiction over nonresident defendants, sections 187 and 1701.03 of title 12 of the Oklahoma Statutes.47 Section 187 had been adopted in 1963 and was based on the Illinois long arm statute.48 Although section 187 authorized the assertion of personal jurisdiction over nonresidents with respect to causes of action arising from a variety of acts, none of these applied to World-Wide Volkswagen.49 Section 1701.03 had been adopted in 1965 as a part of the Uniform Interstate and International Procedure Act. It was somewhat broader than section 187 and authorized the exercise of personal jurisdiction over a nonresident defendant as to causes of action arising from either of the following:

(3) causing tortious injury in this state by an act or omission in this state;
(4) causing tortious injury in this state by an act or omission outside this state
if [the nonresident] regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state.50

The Robinsons' injuries had occurred in Oklahoma, but the acts or omissions of World-Wide Volkswagen that were alleged to have caused the injuries would appear to have been in New York, rather than Oklahoma. Moreover, World-Wide Volkswagen's distribution franchise was limited to Connecticut, New York, and New Jersey, and it neither conducted business in Oklahoma nor derived any revenue from the state. Thus, there seemed to be a strong basis for arguing that World-Wide Volkswagen was not subject to personal jurisdiction under Oklahoma's long-arm statutes. On the other hand, only two years before, the Oklahoma Supreme Court had held that section 1701.03 authorized the assertion of jurisdiction over Volkswagen of America and a Volkswagen distributor in Texas in another products liability case.51

46. Claire V. Eagan, supra note 44.
47. Both long-arm statutes were repealed in 1984, when they were replaced by OKLA. STAT. tit. 12, § 2004(F)(1991), which provides: "A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States."
49. See OKLA. STAT. tit. 12, § 187 (1981)(repealed 1984). One of its provisions extended jurisdiction to causes of action arising from "the manufacture or distribution of a product which is sold in the regular course of business within this state and is used within this state." It was not applicable, however, because World-Wide Volkswagen's business was limited to the tri-state area of Connecticut, New York, and New Jersey, and it did not distribute any Audis in Oklahoma. See World-Wide Volkswagen v. Woodson, 444 U.S. 286, 289 (1980).
Ms. Eagan argued to Judge Woodson that Oklahoma did not have personal jurisdiction over her client under section 1701.03, because World-Wide Volkswagen did not sell any automobiles in Oklahoma. In addition, she maintained that construing section 1701.03 to extend personal jurisdiction over World-Wide Volkswagen would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Judge Woodson advised the inexperienced lawyer that the Fourteenth Amendment did not carry much weight in Creek County, and the motion to reconsider was denied.52

Ms. Eagan was ready to abandon her effort, but Mike Barkley was convinced that Creek County had no jurisdiction over his client. He told her to prepare an application to assume original jurisdiction and a petition for a writ of prohibition and file it with the Oklahoma Supreme Court. Although Volkswagen of America and Audi NSU had also objected to jurisdiction at the trial court level, they did not join in World-Wide Volkswagen's petition to the Oklahoma Supreme Court. However, Seaway Volkswagen, the auto dealer, did join in the petition. Seaway Volkswagen's liability was based on its having sold a defective product that World-Wide Volkswagen had supplied, and therefore, it was entitled to indemnity from World-Wide Volkswagen.53 Moreover, as long as Seaway Volkswagen did not take a position that was adverse to World-Wide Volkswagen, it would be entitled to indemnification for its attorney's fees.54 Consequently, World-Wide Volkswagen assumed primary responsibility for defending the case against Seaway Volkswagen and itself, and Seaway Volkswagen took a passive role throughout the litigation, joining in all of World-Wide Volkswagen's actions.

The Oklahoma Supreme Court granted the application to assume original jurisdiction, but it denied the writ of prohibition.55 Mr. Greer maintained before the Oklahoma Supreme Court that jurisdiction existed under both paragraphs (3) and (4) of section 1701.03, citing the Illinois Supreme Court's holding in Gray v. American Radiator &

52. Letter from Claire V. Eagan, Attorney, to Charles W. Adams, Professor of Law, The University of Tulsa College of Law, (Oct. 19, 1992)(on file with the University of Nebraska College of Law Library).
53. See RESTATEMENT (SECOND) OF TORTS § 866B cmt. d (1977)("The supplier of a defective chattel is required to indemnify a retailer regardless of whether his tort liability is based on negligence or on strict liability, so long as the retailer has failed to discover the defect before selling the product."); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 51 at 342 (5th ed. 1984).
54. See Booker v. Sears Roebuck & Co., 785 P.2d 297, 299 (Okla. 1989)("Indemnification of legal costs is not permissible where an adverse position has been taken by the claimant against the party from whom indemnity is sought.").
The Gray case involved an interpretation of the provision in the Illinois long-arm statute that authorized the assertion of jurisdiction arising from the "commission of a single tort within this State." Reasoning that a tort was not complete until a plaintiff sustained an injury, the Illinois Supreme Court decided that a defendant that had manufactured and sold a defective product in another state committed a tort in Illinois and was therefore subject to jurisdiction there, because the plaintiff's injury resulting from the defect was sustained in Illinois.

The Oklahoma Supreme Court ruled that a similar interpretation of paragraph (3) would render paragraph (4) nugatory, because it would make it impossible to have a tortious injury in the state caused by an act or omission outside the state. Nevertheless, it held that paragraph (4) conferred jurisdiction over World-Wide Volkswagen, because given the retail value of the Audi, World-Wide Volkswagen had derived substantial revenue from the Robinsons' use of the Audi in Oklahoma as well as from the sale of other automobiles that from time to time would foreseeably be used in Oklahoma. The Oklahoma Supreme Court explained its holding as follows:

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

As soon as the Oklahoma Supreme Court's decision came down, Mr. Barkley told Ms. Eagan to pack her bags because they were going to New York. Mr. Barkley was still not ready to give up, and he wanted to obtain authorization from his client to petition the United States Supreme Court for certiorari. When Mr. Barkley and Ms.

60. Id.
61. Mike Barkley had never been to New York before. Claire Eagan had grown up in New York, and so, part of the reason he wanted her along was so that she could help him find his way around the city. Interview with Mike Barkley, supra note 35.
Eagan met with World-Wide Volkswagen's corporate counsel and its insurer in New York, both refused to authorize them to incur any additional legal expenses contesting the jurisdictional issue. Their justification was that World-Wide Volkswagen was entitled to indemnification against Volkswagen of America and Audi NSU for the same reason that Seaway Volkswagen was entitled to be indemnified by World-Wide Volkswagen. Since World-Wide Volkswagen was not willing to pay to take the case to the United States Supreme Court, Ms. Eagan thought the battle over jurisdiction was finally at an end.

But Mr. Barkley took Ms. Eagan across the street to the offices of Herzfeld and Rubin, the law firm representing Volkswagen of America and Audi NSU. Mr. Barkley explained to the lawyers at Herzfeld and Rubin that if World-Wide and Seaway Volkswagen were dismissed for lack of personal jurisdiction, Volkswagen of America and Audi NSU could remove the case to federal court and avoid a trial before a "plaintiff's jury" in Creek County. He managed to convince them that it was in their clients' interests to underwrite the legal expenses of taking the case to the United States Supreme Court, particularly since their clients were already obligated to indemnify World-Wide and Seaway Volkswagen's legal expenses. As a result of Mike Barkley's meeting with Herzfeld and Rubin, Volkswagen of America and Audi NSU agreed to pay for World-Wide Volkswagen's petition for certiorari. In addition, Herzfeld and Rubin would participate in the preparation of the briefs, and a senior partner of Herzfeld and Rubin, Herbert Rubin, would argue World-Wide Volkswagen's cause before the Supreme Court instead of Mike Barkley. Had the "upstream" defendants not paid World-Wide Volkswagen's legal expenses, there would have been no World-Wide Volkswagen Corp. v. Woodson decision by the United States Supreme Court.

The work began on the petition for certiorari. The weakest link in the Oklahoma Supreme Court's opinion was its conclusion that World-Wide and Seaway Volkswagen derived substantial revenue from the use of automobiles in Oklahoma, since it was likely that no

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62. See Booker v. Sears Roebuck & Co., 785 P.2d 297, 298 (Okla. 1989)("[A] manufacturer may be found to have a duty to indemnify its dealer against claims for loss caused by the manufacturer's defect."); Braden v. Hendricks, 695 P.2d 1343, 1349-50 (Okla. 1985)(manufacturer had an obligation created by law to indemnify its dealer on a claim arising from the sale of a defective product); United Gen. Ins. Co. v. Crane Carrier Co., 695 P.2d 1334, 1339 (Okla. 1984)("As a general rule, an indemnitee is entitled to recover as part of his damages, reasonable attorney's fees."); Porter v. Norton-Stuart Pontiac-Cadillac of Enid, 405 P.2d 109, 110 (Okla. 1965)(owner of garage was entitled to indemnity against manufacturer); RESTATEMENT (SECOND) OF TORTS § 886B(2)(d)(1977); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 51 at 342 (5th ed. 1984).

63. Interview with Mike Barkley, supra note 35.

automobiles they had ever sold, aside from the Robinsons’ Audi, had been used in Oklahoma. However, the Oklahoma Supreme Court is the final authority on matters of Oklahoma law,\textsuperscript{65} such as the meaning of the phrase “derives substantial revenue from goods used . . . in this state” in section 1701.03(4). The only issue the United States Supreme Court could address was whether Oklahoma’s exercise of jurisdiction over World-Wide and Seaway Volkswagen violated their rights to due process of law under the Fourteenth Amendment to the United States Constitution.\textsuperscript{66}

Although it had long been a fundamental topic in every law school civil procedure course, at the time the petition for certiorari was being prepared, the constitutionality of a state court’s exercise of personal jurisdiction over nonresident defendants had been addressed in only a relatively small number of Supreme Court cases. One hundred years before, the Supreme Court had ruled in the landmark case of \textit{Pennoyer v. Neff}\textsuperscript{67} that the Fourteenth Amendment’s Due Process Clause places limits on a state court’s exercise of jurisdiction over nonresident defendants.\textsuperscript{68} The \textit{Pennoyer} scheme of personal jurisdiction was based on the physical presence of defendants: in general, the courts of a forum state could exercise jurisdiction over any persons and property within its borders but could not exercise jurisdiction over persons and property outside its borders.\textsuperscript{69} Serious problems ultimately developed in applying this jurisdictional scheme to nonresident motorists, who might cause an accident in a state and depart before the victims could serve them with summons. Similar difficulties were presented by modern corporations that conduct business nationwide but lack a physical presence in many states. These problems led the Supreme Court to scrap the \textit{Pennoyer} scheme in 1945 and replace it with a fairness standard based on minimum contacts and “traditional notions of fair play and substantial justice”\textsuperscript{70} in \textit{International Shoe Co. v. Washington}.\textsuperscript{71}

During the early 1950s, the Supreme Court applied the new \textit{International Shoe} standard flexibly in several cases,\textsuperscript{72} each time upholding the exercise of personal jurisdiction. But in 1958, it ruled that a Flor-
ida state court's exercise of jurisdiction was unconstitutional in *Hanson v. Denckla*.

After *Hanson*, the Supreme Court seemed to lose interest in the area, and during the next two decades, it did not take any cases involving personal jurisdiction. Then in 1977 and 1978, the Supreme Court handed down *Shaffer v. Heitner* and *Kulko v. Superior Court*, two decisions in which it reversed assertions of personal jurisdiction over nonresident defendants by state courts.

The brief accompanying World-Wide and Seaway Volkswagen's petition for certiorari emphasized the Supreme Court's three most recent cases in which it had ruled in favor of defendants contesting personal jurisdiction. In *Hanson v. Denckla*, the Supreme Court first articulated the rule that for a defendant to be subject to a state court's jurisdiction, there must "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." The Supreme Court again employed this "purposeful availment" requirement to strike down state courts' assertion of jurisdiction over nonresident defendants in *Shaffer v. Heitner* and *Kulko v. Superior Court*, and World-Wide and Seaway Volkswagen urged its application in their own case. They pointed out that the Robinsons were responsible for the Audi's entering Oklahoma, and argued that they should not be subject to jurisdiction in Oklahoma because of "a fortuitous event precipitated by the unilateral, voluntary act of the Robinsons in driving through that state." World-Wide and Seaway Volkswagen further argued the mere fact it may have been foreseeable that the Robinsons might drive to Oklahoma should not be enough to permit its courts to exercise jurisdiction over the compa-


75. 436 U.S. 84 (1978).
78. 433 U.S. 186 (1977). *Shaffer v. Heitner* arose out of a stockholder's derivative suit concerning corporate mismanagement that was filed in Delaware. The plaintiff attempted to base jurisdiction over the corporation's officers and directors on their ownership of stock in the corporation.
79. 436 U.S. 84 (1978). The plaintiff in the *Kulko* case sued her former husband, a New York domiciliary, in California to increase the husband's child support payments. The husband's only contact with California was that he had paid for his daughter's plane ticket to California when she expressed her wish to live with her mother. The Supreme Court held that this did not satisfy the purposeful availment requirement.
81. *Id.* at 6.
nies; otherwise, any local seller would become subject to suit in every state where a purchaser might take a product. They contended that to provide a sufficient basis for jurisdiction, foreseeability had to be coupled with the "affiliating circumstances" that the seller purposefully availed itself of the benefits of the forum state.

Mr. Greer responded that World-Wide and Seaway Volkswagen were parts of a national network of Audi dealers, including one located in Tulsa on Route 66. Consequently, both World-Wide and Seaway Volkswagen could reasonably anticipate that purchasers of their automobiles would travel to Oklahoma and require servicing there. He also cited a number of cases upholding jurisdiction where torts committed in another state resulted in injuries in the forum state. The Robinsons' brief in opposition to the petition for certiorari concluded with an appeal to the Supreme Court that it not return to the restrictive jurisdictional doctrine of Pennoyer v. Neff, which the Supreme Court had rejected twenty years before.

The Supreme Court grants fewer than five percent of the thousands of petitions for certiorari that are filed with it each year. The chances of having one's case heard by the High Court are therefore ordinarily slim, but the likelihood that the Court would grant World-Wide Volkswagen's petition seemed especially remote. Not only had the Supreme Court heard few cases involving personal jurisdiction over the preceding two decades, but it had denied numerous petitions for certiorari presenting issues similar to those raised by World-Wide Volkswagen.

85. Id. at 9-16.
86. Id. at 23.
87. For example, out of 4,781 on its docket during the October 1979 term, the Supreme Court granted review in only 154 (3.22%) of them. ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, table A-1 at 353 (1980).
One aspect of World-Wide Volkswagen's case, however, distinguished it from the others: it was the first petition for certiorari in a products liability case where the allegedly defective product had been brought into the forum state by a consumer, rather than by the manufacturer or a distributor. This would prove to be crucial to the Supreme Court's decision that Oklahoma lacked jurisdiction over World-Wide Volkswagen and Seaway. Another factor that may have influenced the Supreme Court was the coincidental filing of an appeal in *Rush v. Savchuk*, a case from Minnesota involving an issue of *quasi in rem* jurisdiction. The Supreme Court noted probable jurisdiction in *Rush v. Savchuk* on the same day that it granted World-Wide and Seaway Volkswagen's petition for certiorari, and ordered the two cases set for argument together.

It is interesting that in presenting their arguments to the Supreme Court, both parties avoided mentioning that World-Wide and Seaway Volkswagen were merely "straw defendants" joined by the Robinsons' attorney to prevent removal from Creek County state court to the federal court in Tulsa. Instead, World-Wide and Seaway Volkswagen attempted to bolster their argument that Oklahoma lacked jurisdiction over them, urging the unfairness of being required to defend themselves in far-off Oklahoma if they were not dismissed from the case. In actuality, had they not been dismissed from the case, World-Wide and Seaway Volkswagen unquestionably would have been defended by Volkswagen of America and Audi NSU, whose lawyers were already representing them before the Supreme Court.

On the other side, Mr. Greer sought to convince the Supreme Court of the reasonableness of the Oklahoma court's assertion of jurisdiction by stressing that if World-Wide and Seaway Volkswagen were not subject to suit in Oklahoma, the case against them would have to be tried in New York. He fully realized, though, that there was no

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89. Cf. cases cited supra note 88.
93. Brief for Petitioners at 7, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)(No. 78-1078)("To require Seaway and World-Wide to defend in Oklahoma in the absence of any activities by them is necessarily unfair and unreasonable.").
94. Brief of Respondent at 21, World-Wide Volkswagen Corp. v. Woodson, 444 U.S.
reason for the Robinsons to sue World-Wide and Seaway Volkswagen in New York, when Volkswagen of America and Audi NSU were still subject to suit in Oklahoma.95

The apparent lack of a tactical justification for the heated contest over jurisdiction perplexed Justice Blackmun. He began his dissenting opinion in the case with the following remarks:

I confess that I am somewhat puzzled why the plaintiffs in this litigation are so insistent that the regional distributor and the retail dealer, the petitioners here, who handled the ill-fated Audi automobile involved in this litigation, be named defendants. It would appear that the manufacturer and the importer, whose subjectability to Oklahoma jurisdiction is not challenged before this Court, ought not to be judgment-proof. It may, of course, ultimately amount to a contest between insurance companies that, once begun, is not easily brought to a termination. Having made this much of an observation, I pursue it no further.96

Neither Justice Blackmun nor the other Justices could have been expected to know of Creek County's pro-plaintiff juries, and because it never came up at oral argument, the Supreme Court did not fully understand the tactical posture of either party. The case is thus a good example of a situation where both sides may have incentives to leave certain information concealed from the court, so that the adversary system fails to perform its purpose of promoting full disclosure.97 The "cases and controversies" requirement in Article III of the United States Constitution is not always effective in bringing all the important aspects of a lawsuit to the attention of the decision maker.

One can only guess whether the World-Wide Volkswagen case would have been resolved differently if the Justices had been told that the battle over jurisdiction was a fight over removal jurisdiction,

286 (1980)(No. 78-1078)("If the distributor and dealer defendants are removed from the case, the litigation will be completed and have to be duplicated in New York.").

95. At no time did Volkswagen of America and Audi NSU contest the Oklahoma court's jurisdiction over them. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 288 n.3 (1980)("Both Volkswagen and Audi remain as defendants in the litigation pending before the District Court in Oklahoma.").


97. Cf. MARVIN E. FRANKEL, PARTISAN JUSTICE 17 (1980)("[M]any of us trained in the learned profession of the law spend much of our time subverting the law by blocking the way to the truth. The subversion ... follows from the assigned roles of counsel in the very system of law which thus finds its purposes thwarted."); GEOFFREY C. HAZARD, JR., ETHICS IN THE PRACTICE OF LAW 123 (1978)("[T]he adversary system in practice is known by its practitioners often to be anything but the truth-revealing process that it pretends to be."); STEPHAN LANDSMAN, READINGS ON ADVERSARIAL JUSTICE: THE AMERICAN APPROACH TO ADJUDICATION 27 (1988)("Critics of the adversary system argue that parties should not be allowed to control the information-gathering process because they cannot be trusted to present all the relevant evidence. Rather, the parties are likely to provide only the information that they think helps their cause.").
rather than personal jurisdiction, and that World-Wide and Seaway Volkswagen were fully indemnified by Volkswagen of America and Audi NSU. At the very least, certiorari might not have been granted, but even if it had, the Court might have used different reasoning. Several years after the World-Wide Volkswagen decision, the Supreme Court decided Phillips Petroleum Co. v. Shutts, a case involving a state court’s exercise of jurisdiction over absent class action plaintiffs. It upheld the assertion of jurisdiction over absent class action plaintiffs even though they did not have the minimum contacts with the state that would be required for personal jurisdiction over an absent defendant because “the Due Process Clause need not and does not afford the former as much protection from state-court jurisdiction as it does the latter.” Part of the Supreme Court’s rationale for affording class action plaintiffs less “protection” than defendants was that the class representatives are obligated to protect the interests of the absent class members. Had the Supreme Court been aware of the limited roles and exposure of World-Wide and Seaway Volkswagen in the litigation before it, the Court might have afforded them less protection from Oklahoma’s assertion of jurisdiction.

On January 21, 1980, just over a year after the filing of the petition for certiorari, the Supreme Court issued its now famous decision reversing the Oklahoma Supreme Court. Justice White authored the majority opinion in which the Court adopted the position urged by World-Wide and Seaway Volkswagen that the foreseeability of a product’s coming into a state and causing injury was not a sufficient basis for personal jurisdiction. Rather, “the defendant’s conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there.” Applying the “purposeful availment” standard from Hanson v. Denckla, the Court decided that World-Wide and Seaway Volkswagen were not subject to jurisdiction in Oklahoma, because they did not serve the Oklahoma market either directly or indirectly. That it may have been foreseeable for the Robinsons to drive their Audi to Oklahoma did not subject World-Wide and Seaway Volkswagen to jurisdiction, because the actions of the Robinsons did not constitute contacts by World-Wide and Seaway Volkswagen with Oklahoma.

A peculiar feature of Justice White’s opinion is that it based the “purposeful availment” standard on principles of interstate federalism

99. Id. at 811.
100. Id. at 809.
102. Id. at 297.
103. Id. at 295.
104. Id. at 298.
and the sovereignty of the individual states, as well as on the defendants' individual liberty interests under the Fourteenth Amendment. The opinion's reliance on federalism was soundly criticized by Martin Redish, who objected that the principles of interstate federalism are unrelated either to the Fourteenth Amendment's Due Process Clause or to the limitations on personal jurisdiction that have grown out of it.

In *Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, the next personal jurisdiction case to come before it, the Supreme Court executed a quick about-face. Again writing for the majority, Justice White first acknowledged that the *World-Wide Volkswagen* decision had stated that the limitations on personal jurisdiction reflect elements of federalism and state sovereignty. But he went on to say that the limitations on personal jurisdiction were actually derived from the individual liberty interests protected by the Due Process Clause, which are unrelated to federalism concerns. Justice White added that federalism could not be the source of restrictions on the power of state courts to exercise personal jurisdiction; if it were, defendants would be unable to waive jurisdiction.

Had the Supreme Court known of Mr. Greer's reasons for naming World-Wide and Seaway Volkswagen as defendants, it might well have based its decision on federalism concerns, but of a different type. Instead of emphasizing the "purposeful availment" requirement, the Court might have discussed the policies behind removal jurisdiction and whether the joinder of nondiverse defendants who have little at stake in the litigation and little connection with the forum state should prevent removal to federal court.

*World-Wide and Seaway Volkswagen's battle over jurisdiction*

105. Id. at 294.
108. Id. at 702-03 n.10.
109. Id.
110. Id.
ended with the Supreme Court's decision, which has become a staple of civil procedure courses and casebooks since 1980. But the battle over jurisdiction was only a preliminary skirmish in the many years of litigation that lay ahead for the parties who remained in the case.

IV. THE TRIAL IN FEDERAL COURT AND SUBSEQUENT LITIGATION

Bert Jones filed the second petition for removal on behalf of Volkswagen of America and Audi NSU in the United States District Court for the Northern District of Oklahoma twenty nine days after the Supreme Court's decision.\textsuperscript{112} In the petition he summarized the history of the litigation, and explained that the action had not been subject to removal until the Supreme Court ruled that the Oklahoma courts had no jurisdiction over World-Wide and Seaway Volkswagen.\textsuperscript{113} The petition concluded with a statement that this created "a factual situation as though World-Wide and Seaway were found to have been fraudulently joined parties to defeat jurisdiction."\textsuperscript{114} The Robinsons did not challenge the second petition for removal with a motion to remand.

It is interesting to note that this second petition for removal would have been untimely if the current version of Section 1446 of Title 28 had been in effect at the time. An amendment to Section 1446 in 1988 added a one year time limit from the commencement of a case for seeking removal when federal subject matter jurisdiction is based on diversity of citizenship.\textsuperscript{115} Had this amendment been in effect, the defendants would not have sought Supreme Court review of Judge Woodson's decision to overrule the special appearances of World-Wide and Seaway Volkswagen, because it would not have been feasible to obtain review by the Supreme Court within one year after the commencement of the Robinsons' case. The Robinsons would have had their case tried in Creek County, and there would have been no \textit{World-Wide Volkswagen Corp. v. Woodson} decision.

By the time the Robinsons' case was removed to federal court, Judge Barrow had died, and the case was assigned to Judge James O. Ellison. Known by the local bar as a caring, kind-hearted individual, with a deep devotion to fairness and a true concern for the weak and disadvantaged, Judge Ellison had been appointed to the federal bench the year before by President Carter.\textsuperscript{116} His involvement with the Robinsons' case was to span more than a decade.

\textsuperscript{113} Id. at 1-2.
\textsuperscript{114} Id. at 2-3.
The Robinsons' case against Volkswagen of America and Audi NSU was founded on allegations of design defects in the Audi's body and fuel system. The 1976 Audi had what is known as a drop-in gas tank. The gas tank was located in the bottom of its trunk, level with the trunk floor, with only a layer of carpet separating the gas tank from the trunk's interior. A filler pipe from the gas tank to the gas cap ran next to the jack inside the trunk. Mr. Greer contended that locating the gas tank in the trunk made it susceptible to puncture in a rear-end collision, particularly if metal objects were stored in the trunk. Moreover, placing the gasoline filler pipe next to the jack was dangerous, because it was foreseeable that the filler pipe could be severed by the jack in a rear-end collision. He maintained that the Audi's manufacturer should have mounted the gas tank over the rear axle and between the wheels, where it would be better protected in collisions.¹¹⁷

Mr. Greer also contended that the Audi should have been designed to prevent a fire in the trunk from spreading to the passenger compartment. The Audi had a steel wall separating the trunk from the rear of the passenger compartment, but it had a number of large holes in it that might permit gasoline to spread to the passenger compartment through the area over the rear seat. Finally, he claimed that the Audi's uni-body construction was responsible for all its doors being wedged shut in the collision so that the Robinsons could not escape from the burning car. Noting that the Robinsons' only injuries were burns and that they suffered no injuries from the collision itself, he argued that the collision was not very severe, and that the Audi should have been designed to withstand a collision without its doors trapping the occupants inside.¹¹⁸

Mr. Jones put up a vigorous defense. His strategy was to blame the accident on Lloyd Hull, the drunken driver of the Ford Torino that rear-ended the Audi. At his deposition taken five months after the accident, Mr. Hull testified that he had not looked at his speedometer until after he had come to a stop and therefore, he did not know how fast he was going.¹¹⁹ Because the speedometer was jammed at 75 mph, Mr. Hull estimated his speed to be in the neighborhood of 90 mph, but he admitted that he might have been going as slow as 75 mph or as fast as 110 mph.¹²⁰ Mr. Jones argued that it was unreasonable to expect the Audi to be designed so that its gas tank would withstand such a

¹¹⁸. Id.
¹²⁰. Id. at 35-36.
severe impact. He also pointed out that post-crash fires arising from rear-end collisions are exceedingly rare. Of the more than three and a half million Audis with the same fuel system, the Robinsons’ accident was the first the company was aware of in which an Audi had caught fire in a collision. Furthermore, in 1975, when the 1976 Audi was designed, it was common for manufacturers to use drop-in gas tanks located in the trunk, and the Audi gas tank was made with thicker steel than that used by most other manufacturers. Mr. Jones also claimed that the steel wall separating the passenger compartment from the trunk did prevent the fire from spreading to the passenger compartment. His medical expert had testified that the Robinsons’ burns would have been much worse if they had been subjected to direct flames inside the passenger compartment. Mr. Jones contended that the source of the Robinsons’ burns was actually heat radiating from the fire in the car’s trunk.

In addition to arguing that the Audi gas tank was not defectively designed, Mr. Jones disputed the Robinsons’ contention that they were trapped in the Audi because its doors had jammed. After she was taken to the hospital, Kay Robinson had asked Mike Miller to retrieve her purse from the car. When he went to the salvage yard to look for the purse, Mr. Miller noticed that while the doors on the driver’s side were jammed shut, both doors on the passenger’s side could be opened. Mr. Jones contended that the doors on the passenger’s side had been locked at the time of the accident, and the reason the Robinsons did not leave the burning car on their own was that they had panicked and failed to unlock them.

The trial lasted four weeks. Much of the evidence related to technical issues of automotive design, and it was presented through a number of engineering experts for both sides. Mr. Greer also offered considerable evidence on damages. This included descriptions of the Robinsons’ physical injuries, their numerous surgical procedures, the many months of physical therapy, the excruciating pain from their burns, and the psychological trauma caused by the pain and disfigurement. Leonard Pataki, Judge Ellison’s law clerk, remembers that the case was very well-tried by both sides. He was especially im-

122. Id. at 28-29.
123. Id. at 27-28.
124. Id. at 27-34.
125. Id. at 36.
126. Id. at 35-37.
127. Opening statements in the case were on November 23, 1981, and closing arguments were on December 17, 1981.
pressed by the quality of the demonstrative evidence used. Mr. Greer had had an Audi of the same design as the Robinsons’ cut in half to show the location of the gas tank and fuel system, and had it moved to the basement of the federal courthouse for viewing by the jury. Mr. Jones had film footage of Audi rear-end crash tests, which he showed to the jury, and seventeen different gas tanks were displayed to the jury during the course of the trial. At one point during the trial, he requested permission to present a demonstration that involved lighting a fire inside the courtroom, but Judge Ellison refused to allow it.

The theme of Mr. Greer’s closing argument was that while Lloyd Hull caused the accident and the damage to the Audi, the harm to the people was caused by the car’s manufacturer. He concluded his argument with a chilling suggestion to the jurors that if they ever drove a lightweight car, they should be sure to drive with the windows down so they would have a better chance of escaping after an accident.

After six hours of deliberations, the jury returned a verdict for the defense. Leonard Pataki was mildly surprised that the jurors appeared not to have let their natural sympathy for the Robinsons interfere with their responsibility to follow the law as laid out in Judge Ellison’s instructions.

The Robinsons appealed to the Tenth Circuit, urging a number of grounds for reversal, ranging from discovery abuse to improper evidentiary rulings and jury instructions. The appellate court ruled that most of the Robinsons’ claims of error did not warrant reversal, but decided that a new trial was necessary because one of Judge Ellison’s rulings excluding several documents that Mr. Greer believed were critical to the Robinsons’ case. These documents had been obtained by Robert Brenner, one of the Robinsons’ engineering experts, from the files of the National Highway Traffic Safety Administration (NHTSA).

In the course of promulgating rules governing safety standards, the NHTSA is required to notify motor vehicle manufacturers in advance of its proposed rules and request their comments. In 1968, Volk-
swagen of America had submitted the following response to a proposed rule requiring the use of puncture-resistant fuel tanks: "Puncture resistance of the fuel tank is only important if the tank is located inside the trunk of the vehicle. Pieces of luggage or tools with sharp edges can locally penetrate the tank." Mr. Greer asserted that this response proved the Robinsons' case of strict liability, because it showed that the manufacturer was aware of the danger of placing a drop-in gas tank in the trunk of the Audi.

Judge Ellison initially ruled that the NHTSA documents were admissible against both Volkswagen of America and Audi NSU, but after hearing argument from Myron Shapiro, an associate with Herzfeld and Rubin, he reversed his initial ruling and excluded them. Mr. Shapiro had pointed out that the documents showed on their face that they had been submitted by Volkswagen of America on behalf of Volkswagen of Germany, and not on behalf of Audi NSU, the manufacturer of the Audi. He argued that they were irrelevant to products liability claims involving Audis. Mr. Greer contended that the documents were admissible as admissions of an agent under Federal Rule of Evidence 801(d)(2), because Volkswagen of America was a wholly owned subsidiary of Volkswagen of Germany, and Volkswagen of Germany held a majority interest in Audi NSU. Judge Ellison decided not to admit the documents against Audi NSU on the grounds that any knowledge that Volkswagen of America may have had concerning the dangers of drop-in gas tanks could not be imputed to its principal, Audi NSU. Judge Ellison also concluded that the documents were not admissible against Volkswagen of America because Volkswagen of America was not responsible for the Audi's design, and therefore its knowledge of any design defects was not relevant to the Robinsons' claim against it.

On appeal, the Tenth Circuit affirmed as to Audi NSU, but reversed as to Volkswagen of America. It determined that the NHTSA documents could not be attributed to Audi NSU, because they were submitted by Volkswagen of America on behalf of Volkswagen of Germany before the agency relationship between Volkswagen of

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140. Robinson v. Audi NSU Auto Union Aktiengesellschaft, 739 F.2d 1481, 1488 (10th Cir. 1984).
141. Id. at 1486, 1488.
143. Id. at 16-24.
144. Id. at 30-31.
145. Id. at 8, 37.
146. Id. at 37.

\[\text{Establishing or amending safety standards; } 5 \text{ U.S.C. } \S 553 \text{ (1988)(requiring publication of notice of proposed rule making in the Federal Register).} \]
America and Audi NSU arose. Thus, the documents did not qualify as admissions of an agent under Federal Rule of Evidence 801(d)(2)(C) and were inadmissible hearsay as to Audi NSU.148 In contrast, the documents were clearly attributable to Volkswagen of America, since it was the entity that submitted them to the NHTSA.149 The Tenth Circuit rejected Judge Ellison’s determination that the documents were not relevant to the Robinsons’ claim against Volkswagen of America, which was not responsible for the Audi’s design. The Tenth Circuit ruled that a distributor stands in the same shoes as the manufacturer under Oklahoma products liability law, and accordingly any evidence concerning an alleged defect in a product that would be admissible against a manufacturer would be admissible against a distributor.150 Finding the NHTSA documents to be the “most compelling evidence of prior knowledge,”151 the Tenth Circuit held that Judge Ellison’s decision to exclude them was not only erroneous, but also prejudicial to the Robinsons.152 It ordered a new trial against Volkswagen of America alone so a second jury would have the opportunity to consider Volkswagen of America’s prior knowledge of the dangers of the Audi drop-in gas tank design.153

After the Tenth Circuit issued its decision in July, 1984, Mr. Greer began preparation for a second trial against Volkswagen of America before Judge Ellison. Despite his defeat in the first trial, he was optimistic about prevailing against Volkswagen of America. A major reason was that he would at last be allowed to use the “smoking gun” NHTSA documents against Volkswagen of America to prove its knowledge of the risks of the drop-in gas tank design.154 Another significant advantage that Mr. Greer believed he would have at the second trial was the chance to introduce evidence of a subsequent design change in the Audi’s fuel system to support the Robinsons’ claim that the previous design was defective. Beginning with the 1980 model, Audi had moved the gas tank out of the trunk to the front of the rear axle, where it was better protected from rear-end collisions.155 At the time of the first trial in 1981, it appeared that evidence of this design change was inadmissible under Federal Rule of Evidence 407, because it was a subsequent remedial measure.156 However, in September 1983, the Tenth Circuit held in Herndon v. Seven

148. Id. at 1487.
149. Id.
150. Id. at 1488.
151. Id. at 1489.
152. Id.
153. Id.
154. See supra notes 150-153 and accompanying text.
156. FED. R. EVID. 407 provides in pertinent part: “When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur,
that rule 407 is not applicable in products liability cases. As a result of the *Herndon* case, Mr. Greer expected to be allowed to prove, when the case was retried, that Audi no longer used drop-in gas tanks in its vehicles.

Mr. Greer’s optimism was short-lived. Before he could get the Robinson case to trial the second time, the Robinsons’ claim against Volkswagen of America was extinguished by a decision of the Oklahoma Supreme Court. *Braden v. Hendrick* was a products liability suit against Ford Motor Company and an auto dealer from whom the plaintiff had purchased her station wagon. After the trial judge granted the dealer’s demurrer to the evidence (the Oklahoma analog to a motion for judgment as a matter of law), the jury returned a verdict in favor of Ford. When the plaintiff appealed, the Oklahoma Supreme Court affirmed the judgment for Ford on the jury verdict. In addition, it affirmed the judgment in favor of the dealer, despite its finding that the trial judge “clearly erred” in granting the dealer’s demurrer to the evidence. The Oklahoma Supreme Court ruled that the claim against the dealer should originally have been allowed to go to the jury, because the dealer’s liability was coextensive with the manufacturer’s. Nevertheless, it held that a retrial of the claim against the dealer was precluded by the judgment for the manu-

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157. 716 F.2d 1322, 1327 (10th Cir. 1983)(“Rule 407’s exclusion of evidence, however, is inappropriate in actions against defendants who are pursuing activities for which society has decided to assess strict liability.”), cert. denied, Piper Aircraft Corp. v. Seven Bar Flying Serv., 466 U.S. 958 (1984).

158. In *Moe v. Avions Marcel Dassault-Breguet Aviation*, 727 F.2d 917 (10th Cir. 1984), the Tenth Circuit held that evidence of subsequent remedial measures would not be admissible in a diversity case if this evidence was not admissible under the applicable state law. The court explained its rather complicated position on the admissibility of subsequent remedial measures as follows:

If a state has not announced controlling rules, such as New Mexico, (*Herndon, supra*), the federal district court, sitting as a state court in a product liability diversity case, must determine whether Rule 407 applies. Where the state law is expressed in product liability cases, these expressions control the application of Rule 407.

*Id.* at 932. Neither the Oklahoma Legislature nor its courts had resolved the question of the admissibility of evidence of subsequent remedial measures in products liability cases. See OKLA. STAT. tit. 12, § 2407 (1991)(substantially identical language to FED. R. EVID. 407). As a consequence, the rule from *Herndon*, rather than the limitation in the *Moe* decision, would have controlled at the retrial of the Robinsons’ case, and the evidence of the design change would have been admissible.

159. 695 P.2d 1343 (Okla. 1985).
160. *Id.* at 1347.
161. *Id.* at 1352.
162. *Id.* at 1351-52.
163. *Id.* at 1351.
manufacturer. The Oklahoma Supreme Court reasoned that the dealer's liability was vicarious, because the alleged product defect was solely attributable to the manufacturing process rather than to the dealer's conduct. It held: "Because Ford's alleged breach clearly was a *sine qua non* of the dealer's own liability for marketing an unsafe car, Ford's exoneration also served to absolve the dealer."¹⁶⁴

Mr. Jones promptly filed a motion for summary judgment on behalf of Volkswagen of America, relying on the *Braden* decision. Judge Ellison granted the motion, and the Tenth Circuit affirmed the summary judgment.¹⁶⁵ Mr. Greer advised Harry and Kay Robinson against petitioning either the Tenth Circuit for a rehearing or the United States Supreme Court for a writ of certiorari, because he believed that there was little chance of success.¹⁶⁶ Thus, after nine years of litigation, it appeared that the Robinsons' pursuit of a recovery for their horrible injuries had finally come to an end.

But just as Mike Miller had appeared at the scene of the accident to rescue the Robinsons from the burning Audi, another figure entered the picture at this point to attempt to revive their case. Winton Woods, a law professor teaching civil procedure at the University of Arizona, had met the Robinsons after they reached Tucson. In 1978, he had written a law review article inaccurately predicting that the Supreme Court would uphold jurisdiction over World-Wide and Seaway Volkswagen,¹⁶⁷ and he had maintained an interest in the case after its removal to federal court. Shortly after the Robinsons received word of the Tenth Circuit's decision affirming summary judgment against them, they came to Professor Woods for help. Professor Woods happened to have owned a Volkswagen dealership during the 1950s, and he had some familiarity with the Volkswagen and Audi or-

¹⁶⁴. *Id.* at 1352 (emphasis in original). The effect of allowing suit against the dealer after the plaintiff lost the suit against Ford would be to allow the plaintiff a recovery when a jury had already decided there was no defect. Moreover, if the plaintiff were successful in a subsequent suit against the dealer, the dealer could obtain indemnity from Ford, so that Ford would have to pay indirectly for a design defect after it had been directly exonereated in the first suit. *RESTATEMENT (SECOND) OF JUDGMENTS* § 51 cmt. b; cmt. c, illus. 4 (1982)(judgment against injured person in suit against defendant who is primarily responsible bars second action against defendant who is vicariously responsible for conduct of the other defendant).


¹⁶⁶. Letter from Jefferson G. Greer, Attorney, to Mr. & Mrs. Harry Robinson (Oct. 17, 1986)(on file with the University of Nebraska College of Law Library).

ganizations. After reviewing the files in the case, he decided that the Tenth Circuit had made a fundamental mistake in the first appeal, and that it had been misled by the law firm of Herzfeld and Rubin as to the true relationship between Audi NSU and Volkswagen of Germany.\(^{168}\)

The Robinsons retained Professor Woods to represent them, and he filed a motion for rehearing with the Tenth Circuit on their behalf, urging it to vacate the judgments below and remand for further proceedings. He argued that the NHTSA documents should have been introduced at the first trial against both Audi NSU and Volkswagen of America, since Audi NSU was essentially the same company as Volkswagen of Germany, the parent company of Volkswagen of America.\(^{169}\) Attached to the motion for rehearing was Professor Woods' own affidavit asserting that the manufacturer of Audi automobiles had been a wholly owned subsidiary of Volkswagen of Germany when the Robinsons' Audi was designed and also when Volkswagen of America submitted to the NHTSA the document pertaining to the puncture resistance of gas tanks.\(^{170}\)

Following denial of the petition for rehearing, the Robinsons, represented by Professor Woods, filed a new action in the United States District Court for the District of Arizona, Tucson Division, against Volkswagen of Germany, Herzfeld and Rubin, and Greer and Greer. In addition to alleging claims for negligence, products liability, and breach of warranty against Volkswagen of Germany, the complaint alleged that Volkswagen of Germany and Herzfeld and Rubin had fraudulently concealed the true relationship between Volkswagen of Germany and Audi NSU in order to cause the trial court erroneously to exclude the NHTSA documents at the first trial. The claim against Greer and Greer was for legal malpractice. Greer and Greer also filed a cross-claim against the other defendants, seeking recovery of their contingency fee.\(^{171}\)

Herzfeld and Rubin moved to dismiss for lack of personal jurisdiction, and the federal court in Arizona ruled that Herzfeld and Rubin lacked minimum contacts with Arizona. Instead of dismissing the claim against Herzfeld and Rubin, however, the federal court ordered

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168. Letter from Winton D. Woods, Professor of Law, The University of Arizona, to Jefferson G. Greer, Attorney (Oct. 16, 1986)(on file with the University of Nebraska College of Law Library).
169. Motion for Rehearing, Robinson v. Audi NSU Auto Union, No. 85-1831 (10th Cir. filed Nov. 10, 1986).
170. Id.
171. Jefferson G. Greer, supra note 29. In addition to the many thousands of hours that Jefferson and Frank Greer had invested in the case, they had also advanced $50,000 in costs and provided the Robinsons with housing during the four-week trial in 1981. Id.
the entire case transferred\textsuperscript{172} to the Northern District of Oklahoma on grounds of comity, so that Judge Ellison would have the opportunity to rule on the claims of fraud on the court.

After the case was returned to Judge Ellison, Volkswagen of Germany and Herzfeld and Rubin both filed motions to dismiss and for summary judgment on the fraud claim, with Herzfeld and Rubin claiming absolute immunity with respect to the defense of its clients in the prior litigation.\textsuperscript{173} Judge Ellison denied the motions, and Herzfeld and Rubin filed an interlocutory appeal. The Tenth Circuit, after ruling that the denial of the claim of absolute immunity was a collateral order which was immediately appealable, affirmed Judge Ellison's decision.\textsuperscript{174} The Court of Appeals held that while prosecutors and government lawyers had been granted absolute immunity on claims similar to those alleged against Herzfeld and Rubin, absolute immunity had not been extended to private lawyers except on defamation claims.\textsuperscript{175}

The Robinsons also filed a separate action to vacate the judgment in the underlying case on the grounds of fraud upon the court.\textsuperscript{176} Judge Ellison conducted a bench trial\textsuperscript{177} in this action during the summer of 1992. Although Judge Ellison acknowledged that he would have admitted the NHTSA documents into evidence at the first trial if he had known of the corporate relationships between Audi NSU and Volkswagen of Germany, he found that there was no clear and convincing evidence of fraud on the court.\textsuperscript{178} Accordingly, he dismissed the action to vacate the judgment in the underlying case.\textsuperscript{179} The case is still not at an end, though, because the Robinsons have appealed.\textsuperscript{180}

V. WORLD-WIDE VOLKSWAGEN'S SIGNIFICANCE TODAY

Although the Supreme Court was concerned only with World-Wide and Seaway Volkswagen, its decision had a substantial effect on the Robinsons' case against Volkswagen of America and Audi NSU.

\textsuperscript{173} Robinson v. Volkswagenwerk Aktiengesellschaft, 940 F.2d 1369, 1370 (10th Cir. 1991).
\textsuperscript{174} Id. at 1370, 1374.
\textsuperscript{175} Id. at 1372-73.
\textsuperscript{176} See FED. R. CIV. P. 60(b)(3).
\textsuperscript{177} See Order, Robinson v. Volkswagenwerk Aktiengesellschaft, No. 88-C-367 (N.D. Okla. filed Jan. 28, 1991)(directing to case to be heard as a FED. R. CIV. P. 60(b) bench trial).
The Supreme Court decision resulted in the Robinsons' case being tried to a conservative jury in federal court in Tulsa, rather than to a potentially more sympathetic jury in Creek County state court. It almost certainly influenced the outcome of the case and the lives of the Robinsons. Beyond that, the *World-Wide Volkswagen* decision has become a landmark in the development of the law of personal jurisdiction.

The decision is significant because of what it has to say about the relevance of state boundaries to the state court's assertion of personal jurisdiction. With its emphasis on "traditional notions of fair play and substantial justice," the *International Shoe* decision suggested (at least to some commentators) that personal jurisdiction should be based entirely on geographic convenience. The *World-Wide Volkswagen* decision emphatically rejected this position:

"Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment."

*World-Wide Volkswagen* thus stands for the proposition that state boundaries do matter. Geographical convenience is only a secondary consideration.

The way that state boundaries now matter differs from the way they did under the *Pennoyer v. Neff* scheme. Defendants no longer need to be physically present within a state's boundaries in order to be subject to the jurisdiction of its courts. Instead of physical presence,


182. See, e.g., Daan Braveman, *Interstate Federalism and Personal Jurisdiction*, 33 Syracuse L. Rev. 533, 534 (1982)("[T]he proper constitutional limitations on state judicial authority should be derived from considerations of fairness and not from imaginary concerns about interstate harmony."); Martin H. Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation*, 75 Nw. U.L. Rev. 1112, 1137 (1981)("[T]he only concern of a principled due process jurisdictional analysis should be the avoidance of inconvenience to the defendant.").

See also Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 Tex. L. Rev. 689, 689-90 (1987)(characterizing the view that limitations of personal jurisdiction are derived solely from considerations of geographic convenience and predictability of result as an "emerging consensus" among commentators).


the law requires minimum contacts between the defendant and the forum state.\textsuperscript{186} And in the \textit{World-Wide Volkswagen} decision, the Supreme Court summed up its standard for determining whether the minimum contacts requirement is satisfied: "[T]he defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there."\textsuperscript{187} This standard is subject to the criticism that it may lead in a circle, because a "defendant cannot know if his actions will subject him to jurisdiction in another State until we have declared what the law of jurisdiction is."\textsuperscript{188} Nevertheless, it can provide lawyers and judges with some degree of predictability with respect to the law of personal jurisdiction,\textsuperscript{189} and \textit{World-Wide Volkswagen} continues to provide the governing standard for minimum contacts in personal jurisdiction cases.

For example, in \textit{Keeton v. Hustler Magazine, Inc.},\textsuperscript{190} the Supreme Court upheld jurisdiction over a publisher in a libel case because it should have reasonably anticipated being haled into court in a state where it sold its magazines.\textsuperscript{191} Similarly, the Supreme Court applied the \textit{World-Wide Volkswagen} standard in \textit{Calder v. Jones}\textsuperscript{192} to uphold jurisdiction over a reporter and editor in another libel case because they should reasonably have anticipated being haled into a court in a state where they knew that their article would cause harm to the plaintiff's reputation.\textsuperscript{193}

The application of the \textit{World-Wide Volkswagen} standard is also illustrated by \textit{Burger King Corp. v. Rudzewicz}.\textsuperscript{194} In \textit{Burger King}, the Supreme Court upheld jurisdiction in a breach of contract case over a franchisee who had entered into a long term franchise contract with Burger King, a Florida corporation. The Supreme Court ruled that the franchisee should reasonably have anticipated being haled into court in Florida on account of the contract documents and the course

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\item \textsuperscript{186} World-Wide Volkswagen v. Woodson, 444 U.S. 286, 291 (1980).
\item \textsuperscript{187} \textit{Id.} at 297.
\item \textsuperscript{188} \textit{Id.} at 311 n.18 (Brennan, J., dissenting).
\item \textsuperscript{189} \textit{Cf. Id.} at 297 ("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.").
\item \textsuperscript{190} 465 U.S. 777 (1984).
\item \textsuperscript{191} \textit{Id.} at 781 ("Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine.")(citing \textit{World-Wide Volkswagen v. Woodson}, 444 U.S. 286 (1980)).
\item \textsuperscript{192} 465 U.S. 783 (1984).
\item \textsuperscript{193} \textit{Id.} at 790 ("Under the circumstances, petitioners must 'reasonably anticipate being haled into court there' to answer for the truth of the statements made in their article.")(citing \textit{World-Wide Volkswagen v. Woodson}, 444 U.S. 286 (1980)).
\item \textsuperscript{194} 471 U.S. 462 (1985).
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of dealing between the parties.\textsuperscript{195}

Most recently, the Supreme Court relied on the \textit{World-Wide Volkswagen} decision in \textit{Asahi Metal Indus. Co. v. Superior Court}.\textsuperscript{196} The Supreme Court was unanimous in concluding that a California court had no jurisdiction over a foreign manufacturer of a component of a motorcycle tire that allegedly caused an injury in California, but the Court so divided as to its rationale that there was no majority opinion.

Justice O'Connor, with three other Justices, concluded that the foreign manufacturer had not subjected itself to jurisdiction in California when it sold components to another foreign company, because its sales activity was not directed toward California.\textsuperscript{197} Justice Brennan, joined by three other Justices, disagreed. Relying on \textit{World-Wide Volkswagen}, Justice Brennan reasoned that the foreign manufacturer should reasonably have anticipated being haled into court in California because it was well aware that the components it sold to the other foreign company were being incorporated into a product that was sold in California.\textsuperscript{198} Nevertheless, he agreed with Justice O'Connor's conclusion that the exercise of jurisdiction was improper because of geographical convenience and other fairness considerations.\textsuperscript{199} Finally, Justice Stevens, joined by two other Justices, reasoned that since fairness considerations precluded the exercise of jurisdiction, it was unnecessary to decide whether minimum contacts existed.\textsuperscript{200} Although the Justices divided over its application, they unanimously agreed that the \textit{World-Wide Volkswagen} decision supplied the controlling standard.\textsuperscript{201}

With its emphasis on the significance of state boundaries, \textit{World-Wide Volkswagen} represents an important shift in the law of personal jurisdiction, and it remains a watershed case.

\section*{VI. CONCLUSION}

The Robinsons' case against Volkswagen of America and Audi NSU is a remarkable story, interesting on many levels. Most obviously, it produced a landmark jurisdictional ruling. Less well known is the tale of terror and suffering that Kay, Eva, and Sam Robinson experienced as they were trapped in the burning car, and the courage of Mike Miller, who risked his own life to save three people he had never met. Additionally, the case generated some fascinating tactical

\begin{itemize}
\item \textsuperscript{195} \textit{Id.} at 472-82, 486-87.
\item \textsuperscript{196} 480 U.S. 102 (1987).
\item \textsuperscript{197} \textit{Id.} at 112.
\item \textsuperscript{198} \textit{Id.} at 121.
\item \textsuperscript{199} \textit{Id.} at 116.
\item \textsuperscript{200} \textit{Id.} at 121-22.
\item \textsuperscript{201} \textit{Id.} at 105, 116, 121.
\end{itemize}
maneuvering by various teams of lawyers over the choice of forum. While the attorneys argued to the Oklahoma and United States Supreme Courts concerning Oklahoma's jurisdiction over World-Wide and Seaway Volkswagen, what they were really fighting over was whether the case against Volkswagen of America and Audi NSU would be tried in Creek County or the federal court in Tulsa.

The case was also characterized by a series of improbable coincidences that began with the rear-end collision's causing not only the rupture of the Audi's gas tank but the jamming of its doors and windows as well, so that the Robinsons could not escape from the passenger compartment on their own. They surely would have died had Mike Miller not happened to have seen the accident from another highway and decided to stop to help. The battle over personal jurisdiction that led the adversaries to the United States Supreme Court came about because of the happenstance that the accident occurred barely inside of Creek County. If the accident had happened in another county, the Robinsons' attorneys would not have bothered to join World-Wide and Seaway Volkswagen as defendants, and the other defendants would not have been motivated to seek their dismissal. And lastly, had it not been for the coincidental filing of the Rush v. Savchuk appeal, World-Wide and Seaway Volkswagen's petitions for certiorari probably would not have been granted.

Another noteworthy feature of the Robinsons' case was the unusual interplay between the Tenth Circuit decision ordering a new trial with respect to Volkswagen of America and the Oklahoma Supreme Court decision in a different case that prevented the new trial from proceeding. And lastly, the ongoing litigation against Herzfeld and Rubin and Volkswagen of Germany presents fundamental questions concerning the finality of judgments and the role of the attorney in an adversary system.

What is most noteworthy about the Robinsons' encounter with the justice system, though, is the monumental injustice of its failure to provide redress for their injuries. Unfortunately for the Robinsons, Lloyd Hull, the person most responsible for their injuries, had no insurance and was judgment proof. Since they could not recover from Mr. Hull, the Robinsons were forced to bring a difficult products liability suit that has continued for fifteen years, with its end still not in sight. The Robinsons' frustrating experience with this litigation has been a tragedy, exacerbated by its close connection to the tragedy they suffered fifteen years ago. Surely, the system has failed both its own purposes and the Robinson family.