Supreme Court No. 91998-4

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 71345-1-I

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

CANDACE NOLL, individually and as Personal Representative of the Estate of Donald Noll, Deceased,

Appellants,

v.

SPECIAL ELECTRIC COMPANY, INC.,

Respondent,

American Biltrite, Inc., *et al.*,

Defendants.

RESPONDENT'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Special Electric Company, Inc. ("Special Electric") petitions for review of the Court of Appeals' decision identified in Section II.

II. COURT OF APPEALS DECISION

Special Electric seeks review of the published decision terminating review in *Noll v. American Biltrite Inc.*, No. 71345-1-I, 2015 WL 3970580, issued by Division I of the Court of Appeals on June 29, 2015 (the "Decision") (copy attached as Appendix A).

III. ISSUE PRESENTED FOR REVIEW

This case involves a claim of injury to a Washington resident alleged to have arisen out of on-the-job exposure to asbestos in Washington caused by cutting into asbestos-containing cement pipe. A nonresident broker supplied asbestos to a nonresident manufacturer of the pipe, and that manufacturer subsequently sold the pipe into Washington. The nonresident broker was sued in Washington for injuries allegedly caused by the asbestos exposure in Washington. The plaintiff alleged that Washington courts could exercise specific personal jurisdiction over the broker. A trial court dismissed based on lack of personal jurisdiction, and the Court of Appeals reversed. This dismissal gives rise to the following issue:

May Washington courts exercise specific personal jurisdiction over the nonresident broker, when the plaintiff has no evidence that the broker was aware that the manufacturer was selling pipe into Washington which contained the broker's asbestos?

For the reasons set forth in Section V of this Petition, this issue warrants review under RAP 13.4(b)(3) and 13.4(b)(4).

IV. STATEMENT OF THE CASE

The Nolls filed a complaint for personal injuries against Defendant and Petitioner Special Electric and several other defendants in King County. CP 1. The Nolls claimed that Donald Noll was exposed to asbestos-containing products from approximately 1958 through 1988 and that the exposure caused Mr. Noll to develop mesothelioma. CP 2-5. Mrs. Noll filed an amended complaint asserting wrongful death and survival claims following Mr. Noll's death from mesothelioma, which occurred after the trial court dismissed Special Electric.[1]

The Nolls alleged that the defendants, including Special Electric, "mined, manufactured, produced, and/or placed into the stream of commerce" asbestos products. CP 2. The Nolls claimed that jurisdiction was proper "pursuant to RCW 4.12.025 because . . . defendants transacted business and/or may be served with process in Pierce County, Washington." CP 2.[2] The Nolls *did not* allege whether Special Electric knew or expected (*i.e.*, whether Special was aware) that the products it

[1] Special Electric attributes the actions taken by the Nolls as plaintiffs in the trial court to "the Nolls," and Special Electric will attribute actions taken by Mrs. Noll, as the plaintiff-respondent, to "Mrs. Noll."

[2] The reference to Pierce County appears to be erroneous since the Nolls filed their lawsuit in King County. The Nolls invoked only RCW 4.12.025, a statute related to venue, in their complaint and not the long-arm statute. *See* CP 2.

supplied would be incorporated into other products that would then be sold into Washington. CP 1-5.[3]

The Nolls' exposure claims against Special Electric arose only out of Mr. Noll's alleged exposure in Washington to asbestos from CertainTeed asbestos-cement pipe, between 1977 and March 1979. CP 101 (opposition to motion to dismiss), CP 311 (Mr. Noll's testimony). Mr. Noll testified that he cut asbestos-cement piping or worked around others cutting the same while working for the contractor Tom Lupo Construction. CP 311-12. Mr. Noll performed the work for Tom Lupo Construction in Port Orchard. CP 311.

Special Electric is a Wisconsin corporation that performed business in Wisconsin and in states east of Wisconsin starting in July 1957. CP 44. The Nolls submitted evidence relating to an alleged connection between Special Electric and two entities known as "Special Materials Co." and "Special Asbestos Co." For the purposes of moving to dismiss Nolls' complaint only, Special Electric did not dispute that Special Electric shared a corporate identity with Special Materials Co. and Special Asbestos Co. CP 244.[4] Special Materials was principally a brokering firm -- it acted as a seller for mining companies, including General Mining and Calaveras Asbestos Company. CP 227, 235.

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[3] The Nolls did allege that every defendant "transacted business" in Washington, *see* CP 2 (§ II, "jurisdiction"), but they later abandoned any claim of general jurisdiction when opposing Special Electric's motion to dismiss.

[4] Special Electric does not concede there was an alter ego relationship between it and Special Materials or Special Asbestos. Special Electric also does not concede whether Mr. Noll was exposed to any asbestos fibers allegedly supplied by Special Materials, Special Asbestos, or Special Electric. CP 244.

The Nolls claimed that Special Electric was responsible for supplying asbestos to CertainTeed between 1975 and 1981. Treating the allegations in the complaint as established and resolving all factual inferences in favor of the plaintiff, the Court of Appeals concluded that "the record showed that Special supplied asbestos to a CertainTeed manufacturing plant in Santa Clara, California[,]" and that "CertainTeed used the asbestos to make pipe that it shipped to Washington in substantial quantities." Decision at 4.[5]

CertainTeed had five asbestos-cement pipe plants located in various places in the United States, but there was no evidence Special Electric knew the reach of any plant's zone of distribution. There was no evidence that Special Electric knew whether CertainTeed had a nationwide distribution network for asbestos-cement pipe, nor evidence that Special Electric knew about CertainTeed's channels of sales. As the Court of Appeals acknowledged, Special Electric "may not have actually known that its asbestos was ending up in Washington as a component of pipe." Decision at 2. In fact, the Nolls did not present any evidence to show that Special Electric was aware that CertainTeed was selling asbestos-containing pipe into Washington.

Special Electric moved to dismiss the Nolls' complaint for lack of personal jurisdiction. The trial court granted the motion, citing

[5] While Special Electric reserves the right to contest the facts alleged in the complaint, it does not challenge the characterization of those facts by the Court of Appeals for the purposes of this petition for review.

J. McIntyre Machinery Ltd. v. Nicastro, __ U.S. __, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011). Mrs. Noll appealed.

The Court of Appeals reversed. Despite its holding that "the record does not prove Special had actual knowledge that CertainTeed distributed its pipe outside California[,]" the Court of Appeals nonetheless held that Special Electric *purposefully directed* its activities *at* Washington and accepted the benefits of Washington law. The Court of Appeals relied on two factors to support this conclusion: its own characterization of Special's product as a "known hazardous material" and CertainTeed's regular shipments of pipe to Washington alleged to contain asbestos supplied by Special Electric. Decision at 11, 13.

V. REASONS WHY REVIEW SHOULD BE ACCEPTED

This Court should accept review to correct the Court of Appeals' unduly expansive interpretation of the stream-of-commerce doctrine of personal jurisdiction. There is no basis for personal jurisdiction under that doctrine where there is no evidence that the defendant has any awareness that its product will be carried by that "stream" into the forum state. Here, the plaintiff offered no evidence that Special Electric had any awareness that any pipe manufactured by CertainTeed containing Special's asbestos was sold by CertainTeed into Washington; the plaintiff offered evidence of a regular flow of CertainTeed products into Washington but no evidence that Special had any awareness of that flow. As for the "hazardous material" factor relied on by the Court of Appeals: a majority of the United States Supreme Court has declined to endorse hazardousness

as a factor that somehow should relieve a plaintiff of the requirement to show awareness that the defendant's product has made its way into the forum state.

A. The Due Process Clause limits Washington's authority to exercise personal jurisdiction over nonresident defendants.

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlap Tire Operations, S.A. v. Brown*, __ U.S. __, 131 S. Ct. 2846, 2853, 180 L. Ed. 2d 796 (2011). And while Washington's long-arm statute, RCW 4.28.185, provides the relevant statutory standards for the exercise of personal jurisdiction, the reach of the long-arm statute may not extend further than the bounds set by Due Process Clause of the Fourteenth Amendment of the United States Constitution. *See Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 766, 783 P.2d 78 (1989).

A court may exercise either general or specific personal jurisdiction over a nonresident defendant. *See Goodyear*, 131 S. Ct. at 2851. General jurisdiction to hear any and all claims against a nonresident defendant is proper where the defendant's "'continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" *Daimler AG v. Bauman*, __ U.S. __, 134 S. Ct. 746, 754-55, 187 L. Ed. 2d 624 (2014) (alterations in original), quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 318, 66 S. Ct. 154, 90

L. Ed. 2d 95 (1945). For example, in *Goodyear*, the Supreme Court rejected the North Carolina Supreme Court's reliance on the defendant's placement of the tires in the stream of commerce to exercise general jurisdiction over the foreign defendants, because such reasoning elided the difference between general and specific jurisdiction. *Goodyear*, __ U.S. __, 131 S. Ct. at 2854-55. General jurisdiction, however, is not at issue in this case, because there is no basis for finding the Special Electric was essentially at home in Washington and because the Nolls did not attempt to establish general jurisdiction before the trial court or argue in favor of it on appeal.

B. Minimum contacts are not present unless the defendant has purposefully directed activities at the forum state.

"When a controversy is related to or 'arises out of' a defendant's contacts with the forum, the United States Supreme Court has said that a 'relationship among the defendant, the forum, and the litigation' is the essential foundation of in personam jurisdiction." *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984), quoting *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977). Courts therefore examine the following three elements to determine if the exercise of specific jurisdiction satisfies due process:

> (1) that purposeful 'minimum contacts' exist between the defendant and the forum state; (2) that the plaintiff's injuries 'arise out of or relate to' those minimum contacts; and (3) that the exercise of jurisdiction be reasonable, that is, that jurisdiction be consistent with notions of 'fair play and substantial justice.'

Grange Ins. Ass'n v. State, 110 Wn.2d 752, 758, 757 P.2d 933 (1988), citing *Burger King Corp. v. Rudzewick*, 471 U.S. 462, 472-78, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

"The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King*, 471 U.S. at 471-72, quoting *Int'l Shoe Co.*, 326 U.S. at 319. The "essential" rule is that "in each case ... 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 protection of its laws." *Hanson v. Deckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), citing *Int'l Shoe Co.*, 326 U.S. at 319.

Minimum contacts are established where the defendant has "'purposefully directed' his activities at residents of the forum." *Burger King*, 471 U.S. at 472 (citation omitted). That "requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or '*attenuated*' contacts." *Id*, 471 U.S. at 475 (citations omitted; emphasis added). "Jurisdiction is proper 'where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Id.* (emphasis in original; citation omitted).

1. The United States Supreme Court in *World-Wide Volkswagen* limited the stream-of-commerce doctrine, holding that the exercise of personal jurisdiction under that doctrine is appropriate only if the defendant *expects* that products delivered into the stream of commerce will be purchased in the forum state.

In *World-Wide Volkswagen v. Woodson*, the Supreme Court held that the foreseeability that a product sold by a nonresident defendant could cause injury in the forum State has never been, by itself, a "sufficient benchmark for personal jurisdiction under the Due Process Clause." 444 U.S. 286, 295, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980). The Supreme Court held that the foreseeability that is critical to the due process analysis "is not the mere likelihood that a product will find its way into the forum State." *World-Wide Volkswagen*, 444 U.S. at 297. Instead, the focus of the inquiry is whether "the defendant's conduct and connection with the forum State are such that he should ***reasonably anticipate*** being haled into court there." *Id.* (emphasis added) (citations omitted). This is crucial to the due process interests at stake, for when a company has "***clear notice*** that it is subject to suit" in the forum State it can act to "alleviate" the risks of litigation there by, for example, "severing its connection with the State." *Id.* (emphasis added).

If the sale of a manufacturer or distributor's product "is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States[.]" *World-Wide Volkswagen*, 444 U.S. at 297. "The forum state

does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that *delivers its products into the stream of commerce* ***with the expectation*** that they will be purchased by consumers in the forum State." *World-Wide Volkswagen*, 444 U.S. at 297-98 (emphasis added), "*cf.*" citation to *Gray v. Am. Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961). Thus, in acknowledging the stream-of-commerce doctrine, the Court also limited its reach by condoning jurisdiction only where the nonresident defendant *expects* that contacts with the forum state would result from the act of placing goods into the stream of commerce.

2. The United States Supreme Court in *Asahi Metal Industry* clarified that establishing such expectation requires, at a minimum, that the nonresident defendant be aware that the stream of commerce will sweep its product into the forum state.

The Supreme Court revisited the stream-of-commerce test in *Asahi Metal Industry Co., Ltd. v. Superior Court*, a case that presented the question of "whether the mere awareness on the part of the foreign defendant that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce constitutes 'minimum contacts' between the defendant and the forum State[.]" 480 U.S. 102, 105, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). In *Asahi*, a plurality of four justices would have held that as "long as a participant in this process [i.e., the "regular and *anticipated* flow" of products from manufacture to distribution to retail sale] is *aware* that the

final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise." *See Asahi Metal Indus.*, 480 U.S. at 117 (Brennan, J., with White, Marshall, and Blackmun, JJ., concurring in part and in the judgment) (emphasis added). Another plurality of four justices would have required an additional showing of conduct directed toward the forum State -- *something more than mere awareness* that the stream of commerce may or will sweep the product into the forum State. *See Asahi Metal Indus.*, 480 U.S. at 112-13 (plurality opinion of O'Connor, J., with Rehnquist, C.J., Powell and Scalia, JJ.,) ("[F]or example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State."). There was no holding resolving the issue because the ninth member of the Court -- Justice Stevens --concluded, in voting to find personal jurisdiction should not be exercised, that the issue did not need to be resolved. *See Asahi Metal Indus.*, 480 U.S. at 121-22 (Stevens, J., with White and Blackmun, JJ., concurring in part and concurring in the judgment).

Although the *Asahi* opinions were splintered on the issue of minimum contacts, there is at least one principle that commanded a majority: Under both the narrow and broad approaches advocated by Justice O'Connor and Justice Brennan respectively, the United States Supreme Court would have required, at a minimum, the defendant's *awareness* that a distribution system will sweep its product to the forum

State. *Compare Asahi Metal Indus.*, 480 U.S. at 117, 121 (Brennan, J., concurring) (stating that the facts found by the California court supported a finding of minimum contacts where the defendant ***was aware*** of the operation of the distribution system that carried its product to California, and "***knew*** that it would benefit" from sales there) (emphasis added) *with Asahi Metal Indus.*, 480 U.S. at 111-12 (plurality opinion of O'Connor, J., concurring) (defendant's mere awareness that its products would be incorporated into products sold in California would not have been sufficient basis to demonstrate purposeful availment without "something more").

3. The United States Supreme Court's decision in *J. McIntyre* does not support a holding that a raw material components supplier may be sued anywhere the distribution system carries the finished product, without at least awareness that this will be the outcome under that distribution system.

The Supreme Court attempted to resolve its differing conceptions of the stream-of-commerce doctrine in *J. McIntyre Machinery, Ltd., v. Nicastro*, __ U.S. __, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011). There, a New Jersey resident was injured by a machine manufactured by a British manufacturer and sold to the United States market by an independent Ohio-based distributer. The plaintiff's New Jersey employer bought a single machine from the American distributor. The English manufacturer attended trade shows in the United States, but not in New Jersey. Six justices of the Supreme Court found that due process prohibited the New

Jersey court from exercising personal jurisdiction over the British manufacturer.

A plurality of four justices led by Justice Kennedy would have held that the British manufacturer did not engage in conduct purposefully directed at New Jersey. The three key facts relied on by the plaintiff -- that a distributor agreed to sell the machines in the United States; that officials for the defendant attended trade shows in several other states, but not New Jersey; and that up to four machines ended up in New Jersey -- revealed only an intent to serve the United States market without showing that the British Manufacturer purposefully availed itself of the New Jersey market. *See McIntyre*, __ U.S. __, 131 S. Ct. at 2790-91 (plurality opinion of Kennedy, J., with Roberts, C.J., Scalia and Thomas, JJ., concurring). The Justice Kennedy plurality would have set in place jurisdictional rules based on actions, not expectations. *Id.* at 2789.

Justice Breyer, joined by Justice Alito, agreed that the New Jersey court could not exercise personal jurisdiction, but insisted that the case should be resolved based on existing precedent instead of refashioning jurisdictional rules. *McIntyre*, __ U.S. __, 131 S. Ct. at 2793 (Breyer, J., concurring in the judgment, joined by Alito, J.). Justice Breyer *rejected* "the absolute approach adopted by the New Jersey Supreme Court" that "a producer is subject to jurisdiction for a products-liability action so long as it 'knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states.'" *McIntyre*, __ U.S. __, 131 S. Ct. at

2793 (Breyer, J., concurring) (emphasis in original), quoting *Nicastro v. McIntyre Mach. Am., Ltd.*, 201 N.J. 48, 76-77, 987 A.2d 575 (N.J. 2010). In rejecting the rule that minimum contacts are established by the mere act of placing goods in a nationwide distribution system that might lead to those goods being sold in any of the fifty states, Justice Breyer was also joined by Justice Kennedy's plurality. *See McIntyre*, __U.S. __, 131 S. Ct. at 2786 (plurality opinion of Kennedy, J., concurring).

Insofar as the holding of *McIntyre* is concerned, the rationale of Justice Breyer's concurring opinion is the narrowest and therefore constitutes the holding. *See Marks v. United States*, 430 U.S. 188, 193, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977) (holding that where "a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds[.]") (internal quotation marks and citation omitted). Justice Breyer, applying pre-existing stream-of-commerce case law, rested his decision on two facts from the case, as stated by the New Jersey Supreme Court: first, there was no regular flow or regular course of sales to New Jersey, and second, there was "no 'something more,' such as special state-related design, advertising, advice, marketing or anything else":

> Mr. Nicastro, who here bears the burden of proving jurisdiction, has shown *no specific effort* by the British Manufacturer to sell in New Jersey. He has introduced no list of potential New Jersey customers who might, for example, have regularly attended trade shows. And he has not otherwise shown that the British

> Manufacturer 'purposefully avail[ed] itself of the privilege of conducting activities' within New Jersey, or that it delivered its goods in the stream of commerce 'with the *expectation* that they will be purchased' by New Jersey users.

McIntyre, __ U.S. __, 131 S. Ct. at 2792 (Breyer, J., concurring), quoting *World-Wide Volkswagen*, 444 U.S. at 297-98 (internal quotation marks omitted by Justice Breyer; emphasis added).

C. This Court should grant review under RAP 13.4(b)(3) because the Court of Appeals' expansive view of stream-of-commerce personal jurisdiction effectively eviscerates meaningful constitutional limitations on personal jurisdiction in products liability cases.

The Court of Appeals held that Special Electric was required to appear and defend this lawsuit in Washington in the absence of any evidence that Special Electric was aware of the reach of the distribution system for CertainTeed's asbestos-cement pipe. Indeed, the Court of Appeals held that Special Electric "may not have actually known that its asbestos was ending up in Washington as a component of pipe[,]" and that "the record does not prove Special had actual knowledge that CertainTeed distributed its pipe outside California." Decision at 2, 13. For the Court of Appeals it was enough that (1) the product was a "known hazardous material," and (2) "Special regularly supplied raw asbestos for the manufacture of pipe that moved into Washington through established channels of sale." Decision at 5, 11. That view of the stream-of-commerce doctrine is inconsistent with *World-Wide Volkswagen*, *Asahi*, *J. McIntyre*, and the rule of due process those decisions elucidate.

The expansive doctrine of "stream of commerce" personal jurisdiction in products liability cases originated with the Illinois Supreme Court's decision in *Gray v. Am. Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961). The United States Supreme Court in *World-Wide Volkswagen*, however, qualified its adoption of the stream-of-commerce doctrine, approving its use only where the nonresident defendant "delivers its products into the stream of commerce with the ***expectation*** that they will be purchased by consumers in the forum State." *World-Wide Volkswagen*, 444 U.S. at 298 (emphasis added) ("*cf*" citation to *Gray*) Effectively ignoring that limitation embedded in the Supreme Court's characterization of *Gray*, the Court of Appeals has resurrected an expansive view of the stream-of-commerce doctrine plainly at odds with United States Supreme Court case law, most notably the Court's post-*World Wide* decision in *Asahi*.

As the Illinois Supreme Court -- the ***same court*** that decided *Gray v. American Radiator* -- has recognized, *Asahi* requires "'at a *minimum*, that the alien defendant is *aware* that the final product is being marketed in the forum state.'" *Russell v. SNFA*, 370 Ill. Dec. 12, 987 N.E.2d 778, 793 (Ill. 2013), quoting *Wiles v. Morita Iron Works, Co.*, 125 Ill.2d 144, 160, 530 N.E.2d 1382 (Ill. 1988) (emphasis in the original; internal quotation to *Asahi* omitted) (holding that there was no basis for the exercise of personal jurisdiction over a foreign defendant where there was no evidence that the defendant was aware that its product would end up in Illinois). The Court of Appeals' reliance on the Illinois Supreme Court's

1961 decision in *Gray v. American Radiator* for the specific contours of stream-of-commerce jurisdiction impermissibly sets Washington law back decades to a time before *World-Wide Volkswagen.*[6] Under *World-Wide Volkswagen* and *Asahi*, Washington may not exercise personal jurisdiction over Special Electric where there is no evidence that Special Electric was aware that a regular flow of commerce would carry CertainTeed's asbestos-cement pipe into Washington.

Evidently to avoid this patent deficiency in jurisdiction, the Court of Appeals erroneously relied on the "hazardous character" factor from Justice Stevens' attempt to establish a multi-factor test for purposeful availment in which courts would evaluate "the volume, the value, and the hazardous character of the components." *See Asahi Metal Indus.*, 480 U.S. at 122 (Stevens, J., with White and Blackmun, JJ., concurring). Justice Stevens, however, failed to garner a majority of votes for his approach, and this Court should grant review and hold that the Court of Appeals erred by relying on that rejected test.

The Court of Appeals' holding is also inconsistent with *J. McIntyre*. While Justice Breyer held that the sale of one machine into New Jersey by the distributor was not sufficient, his concurrence did not hold that a regular flow of sales would have been sufficient in the absence

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[6] As the Court of Appeals recognized in *AU Optronics*, another recently decided stream-of-commerce case, *World-Wide Volkswagen*, *Asahi*, and *J. McIntyre* have superseded earlier Washington case law cited for the proposition that "merely placing goods into a broad stream of commerce can constitute purposeful minimum contacts." *See State v. AU Optronics Corp.*, 180 Wn. App. 903, 921-22, 328 P.3d 919 (2014) (citations omitted).

of any awareness on the part of a component part supplier that the stream of commerce would distribute its component parts to the forum state. In fact, Justice Breyer noted that the plaintiff failed to show "that the British Manufacturer 'purposefully avail[ed] itself of the privilege of conducting activities' within New Jersey, or that it delivered its goods in the stream of commerce 'with the expectation that they will be purchased' by New Jersey users." *J. McIntyre*, 131 S. Ct. at 2792, quoting *World-Wide Volkswagen,* 444 U.S. at 297–98 (internal quotation marks omitted; alterations in the original). Just as the decision in *J. McIntyre* required no more than Justice Breyer's adherence to United States Supreme Court precedent, so, too, should the Court of Appeals have adhered to *Asahi* and *World–Wide Volkswagen* in deciding this stream-of-commerce case.

In sum, this Court should grant review under RAP 13.4(b)(3) to decide whether Washington may, consistent with due process, exercise specific personal jurisdiction over a product liability defendant (here, Special Electric) merely because it sold a product capable of causing harm and which reached the forum through a regular flow of sales by a third-party product manufacturer, about which the defendant was unaware.

D. This Court should also grant review under RAP 13.4(b)(4) to determine the correct standards for the exercise of personal jurisdiction over nonresident products liability defendants based on stream-of-commerce, which is an issue of substantial public interest.

This case is the third in a series of recent decisions from the Court of Appeals addressing stream-of-commerce personal jurisdiction. *See*

State v. AU Optronics, Corp., 180 Wn. App. 903, 328 P.3d 919 (2014), and *State v. LG Electronics, Inc.*, 185 Wn. App. 394, 341 P.3d 346 (2015), *petition for review granted*, No. 91391-9 (Wash. June 3, 2015). In *LG Electronics*, the nonresident antitrust defendants allegedly "exercised hegemony over a prodigious industry responsible for manufacturing and supplying critical component parts to be integrated into consumer technology products, which were ubiquitous in North America during the turn of the century." *LG Electronics,* 185 Wn. App. at 423. The Court of Appeals held that the defendants "***understood*** that third parties would sell products containing their CRT component parts throughout the United States, including large numbers of those products in Washington[,]" and that their actions were "intended to" cause harm in Washington. *Id.* (emphasis added). The Court of Appeals therefore concluded that the defendants purposefully availed themselves of the forum. *Id.*[7]

This Court granted the nonresident defendants' petition for review in *LG Electronics* on June 3, 2015. The issue presented for review by the petitioners in *LG Electronics* was "[w]hether Washington courts may properly exercise personal jurisdiction over nonresident component-part manufacturers solely because the manufacturers *knew* that other

[7] Similarly, in *AU Optronics*, the plaintiff alleged that the nonresident defendant "knew or expected that the products containing their LCD panels would be sold in the U.S. and in Washington[,]" *AU Optronics*, 180 Wn. App. at 926, and the Court of Appeals held that the defendant "understood" that third parties would sell large numbers of its products containing LCD panels into the forum. *Id.* at 924. Further, representatives of the defendant met with various companies in Washington. *Id.* That conduct, plus the large volume of "***expected*** and actual sales" established minimum contacts. *Id.* (emphasis added). No such understanding is present in this case.

companies would incorporate those parts into products that would eventually be sold in meaningful quantities in Washington." Petition for Review in No. 91391-9 at 2 (emphasis added).

Should this Court affirm the Court of Appeals in *LG Electronics*, it must still determine whether due process allows for the exercise of personal jurisdiction where there is no evidence that the nonresident component part supplier knew that third parties would distribute their products to the forum State.[8] Accordingly, this Court should grant review of this case under RAP 13.4(b)(4) to prevent confusion over the circumstances in which a Washington court may exercise personal jurisdiction over component part manufacturers who have no awareness that their products may end up in Washington.

VI. CONCLUSION

This Court should grant review, reverse the Court of Appeals, and reinstate the dismissal of the Nolls' claims against Special Electric.

Respectfully submitted this 29th day of July, 2015.

CARNEY BADLEY SPELLMAN, P.S.

By _____
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[8] Conversely, a reversal in *LG Electronics* would almost certainly overrule the Court of Appeals' outcome in this case. The petitioner here deserves the benefit of any favorable holding from this Court in *LG Electronics* where its due process rights are at stake.

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CANDANCE NOLL, individually and as Personal Representative of the Estate of Donald Noll, Deceased, Appellant, v. AMERICAN BILTRITE, INC.; AMETEK, INC.; BIRD INCORPORATED; BORGWARNER MORSE TEC, INC., as successor-by-merger to BORG-WARNER CORPORATION; CBS CORPORATION, a Delaware corporation, f/k/a VIACOM INC., successor by merger to CBS CORPORATION, a Pennsylvania corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION; CERTAIN-TEED CORPORATION; CONWED CORPORATION; DOMCO PRODUCTS TEXAS INC.; FORD MOTOR COMPANY; GENERAL ELECTRIC COMPANY; GEORGIA-PACIFIC, LLC; HERCULES INCORPORATED; HONEYWELL INTERNATIONAL, INC.; INDUSTRIAL HOLDINGS CORPORA-TION, f/k/a THE CARBORUNDUM COMPANY; INGERSOLL-RAND COMPANY; J-M MANUFACTURING COMPANY, INC.; KAISER GYPSUM COMPANY, INC.; KELLY MOORE PAINT COMPANY, INC.; SABERHAGEN HOLDINGS, INC.;	No. 71345-1-I DIVISION ONE PUBLISHED OPINION FILED: June 29, 2015

SIMPSON LUMBER COMPANY, LLC; SIMPSON TIMBER COMPANY;

Defendants,

SPECIAL ELECTRIC COMPANY, INC.,

Respondent.

BECKER, J. — A Washington court may exercise specific personal jurisdiction over the nonresident supplier of raw asbestos used as a component of asbestos-cement pipe when the pipe, manufactured in California, enters the stream of commerce and is sold on a regular basis to buyers in Washington. The defendant supplier in this case did not specifically target Washington as a destination for its product and may not have actually known that its asbestos was ending up in Washington as a component of pipe. Nevertheless, the regular course of sales that brought the pipe into Washington satisfies the due process requirement for minimum contacts because it shows that the defendant purposefully availed itself of the protection of Washington's laws.

This appeal arises from Donald Noll's death caused by malignant pleural mesothelioma. Donald Noll died in 2013. Candace Noll is the representative of his estate. She alleges that Donald's mesothelioma developed due to his exposure to asbestos when he worked for a construction company in Port Orchard between 1977 and 1979. Before he died, Donald Noll testified that he was exposed to asbestos-cement dust on the job when he cut asbestos-cement pipe manufactured by the CertainTeed Corporation.

Candace Noll's complaint sought damages against CertainTeed, Special Electric Company Inc., and other defendants. The only defendant that is a party to this appeal is respondent Special Electric, a shell corporation. Special Electric has financial responsibility for the conduct of Special Materials, an asbestos broker that is now defunct. See Melendrez v. Superior Court, 215 Cal. App. 4th 1343, 1346-48, 1355-56, 156 Cal. Rptr. 3d 335, review denied, No. S211282 (Sup. Ct. July 17, 2013) (explaining the recent history and current status of Special Electric). For purposes of this appeal, we refer to Special Electric and the companies for which it has financial responsibility simply as "Special."

At all relevant times, Special was a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. Special maintained offices and staff in as many as eight different states to sell and help facilitate the delivery of asbestos. It did not keep an office or staff in Washington.

Noll's complaint asserted specific personal jurisdiction over Special in King County under Washington's long-arm statute, RCW 4.28.185(1). Special entered a limited appearance and attended Donald Noll's preservation depositions in April 2013.

Special then moved to dismiss under CR 12(b)(2).[1] Noll opposed the motion, presenting as the sole issue whether Washington courts may exercise

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[1] CR 12(b)(2) provides:

> (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (2) lack of jurisdiction over the person.

specific personal jurisdiction over Special under the stream-of-commerce doctrine. The trial court dismissed Noll's complaint, citing J. McIntyre Machinery, Ltd. v. Nicastro, __ U.S. __, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011). Noll appeals.

When proceeding under CR 12(b)(2), we treat the allegations in the complaint as established. If the trial court considers materials outside the pleadings, as it did here, we review its decision under the de novo standard of summary judgment, taking all factual inferences in favor of the plaintiff. State v. AU Optronics, Corp., 180 Wn. App. 903, 920-25, 328 P.3d 919 (2014).

Reviewed in this light, the record shows that Special supplied asbestos to a CertainTeed manufacturing plant in Santa Clara, California. CertainTeed used the asbestos to make pipe that it shipped into Washington in substantial quantities. According to shipping invoices, the Santa Clara plant sent at least 55,000 linear feet of asbestos-cement pipe to buyers in Washington between 1977 and 1979, through at least 31 discrete shipments.

During that time period, Special supplied approximately 95 percent of the asbestos used at CertainTeed's Santa Clara plant to manufacture asbestos-cement pipe. In December 1977, Special contracted to supply CertainTeed's pipe division with approximately 4,000 tons of blue asbestos per year from 1978 until 1983. The contract is acknowledged in a letter from General Mining, a mining company in South Africa, agreeing to make that amount of blue asbestos available to Special for distribution to CertainTeed. Special arranged for 1,018

tons of blue asbestos obtained from General Mining to be delivered to CertainTeed's Santa Clara plant between 1977 and 1979.

In short, Special regularly supplied raw asbestos for the manufacture of pipe that moved into Washington through established channels of sale. The issue is whether such conduct is enough to permit a Washington court to exercise specific personal jurisdiction over Special, a nonresident defendant.

A court may exercise specific personal jurisdiction over a nonresident based on much more limited contacts with a forum state than would be required for the exercise of general personal jurisdiction. But specific jurisdiction extends only to causes of action that arise out of those limited contacts. AU Optronics, 180 Wn. App. at 913. Washington courts may exercise specific jurisdiction over an out-of-state defendant if authorized by our long-arm statute, RCW 4.28.185(1), and if doing so is consistent with due process. Our long-arm statute is designed to be coextensive with federal due process. Failla v. FixtureOne Corp., 181 Wn.2d 642, 650, 336 P.3d 1112 (2014), cert. denied, 135 S. Ct. 1904 (2015).

A state court's assertion of jurisdiction is subject to review for compatibility with the Fourteenth Amendment's Due Process Clause because it exposes defendants to that state's coercive power. Goodyear Dunlop Tires Operations, S.A. v. Brown, ___ U.S. ___, 131 S. Ct. 2846, 2850, 180 L. Ed. 2d 796 (2011). The maintenance of the suit will not offend traditional notions of fair play and substantial justice so long as the defendant has "certain minimum contacts" with the forum that is asserting jurisdiction. Int'l Shoe Co. v. State of Wash., 326 U.S.

310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). As a general rule, the sovereign's exercise of power requires 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." Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958). This principle "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); accord Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

A three prong test is used to determine whether the federal due process clause is satisfied. Specific jurisdiction comports with federal due process so long as (1) purposeful "minimum contacts" exist between the defendant and the forum state; (2) the plaintiff's injuries arise out of or relate to those minimum contacts; and (3) the exercise of jurisdiction will be reasonable, that is, it will be consistent with notions of fair play and substantial justice. AU Optronics, 180 Wn. App. at 914. If a plaintiff satisfies the first two prongs, the burden shifts to the defendant to set forth a compelling case that the exercise of jurisdiction would not be reasonable. AU Optronics, 180 Wn. App. at 914-15.

At issue in the present case is the first prong, that is, whether Special "purposefully established" minimum contacts with Washington. Burger King, 471 U.S. at 474. Defendants may not be haled into Washington solely as the result

of contacts that are random, fortuitous, or attenuated. Burger King, 471 U.S. at 475. Noll must show either that Special's activities constituted purposeful availment of Washington's laws or purposeful direction toward Washington. AU Optronics, 180 Wn. App. at 915.

Noll relies on the stream-of-commerce doctrine to prove purposeful availment. "The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." World-Wide Volkswagen Corp., 444 U.S. at 297-98. Cases utilizing the stream-of-commerce doctrine as the basis for long-arm jurisdiction are numerous. The limits of the doctrine were recently explored by the United States Supreme Court in J. McIntyre, 131 S. Ct. 2780.

In that case, a British manufacturer—J. McIntyre—wanted to develop a market for its metal shearing machines in the United States. It sent representatives to attend trade shows in a number of American cities, though not in New Jersey. And it contracted with an American distributor who sold a single machine to a company in New Jersey. That machine allegedly malfunctioned and injured the plaintiff who brought a product liability suit in a New Jersey court. The New Jersey Supreme Court held that the single sale in New Jersey was a sufficient contact to satisfy the test for due process. J. McIntyre "knew or reasonably should have known that by placing a product in the stream of commerce through a distribution scheme that targeted a fifty-state market the

product might be purchased by a New Jersey consumer." Nicastro v. McIntyre Mach. Am., Ltd., 201 N.J. 48, 987 A.2d 575, 577 (2010), reversed, J. McIntyre, 131 S. Ct. 2780.

Six justices of the United States Supreme Court agreed to reverse the decision of the New Jersey Supreme Court, but they were not united in their reasoning. All six agreed that the New Jersey court had erroneously rested jurisdiction upon a single sale of a defective product in the forum State. The four-justice plurality—Justice Kennedy writing for himself, Chief Justice Roberts, and Justices Scalia and Thomas—was particularly concerned that the New Jersey court was erasing the constraints of political boundaries. The plurality opinion reminds courts that jurisdiction is rooted in "the central concept of sovereign authority." J. McIntyre, 131 S. Ct. at 2788 (plurality opinion). It is "inconsistent with the premises of lawful judicial power" to exercise personal jurisdiction over a nonresident "based on general notions of fairness and foreseeability." J. McIntyre, 131 S. Ct. at 2789 (plurality opinion). The plurality would have permitted the exercise of jurisdiction to be based on transmission of goods "only where the defendant can be said to have targeted the forum." J. McIntyre, 131 S. Ct. at 2788-89 (plurality opinion).

According to the plurality, the question is whether a defendant has followed a course of conduct "directed at" the society or economy existing within the jurisdiction of a given sovereign. J. McIntyre, 131 S. Ct. at 2789 (plurality opinion). The trial court here, relying on the plurality's statement of what is required in a stream-of-commerce case, concluded that Noll's complaint had to

be dismissed because there was no showing that Special directed its conduct at the society or economy of the State of Washington.

Justice Breyer authored a concurring opinion joined by Justice Alito. The concurring opinion is controlling because it resolved the issue on narrower grounds than the plurality's. AU Optronics, 180 Wn. App. at 919. The two concurring justices did not endorse the plurality's proposal for a strict rule requiring targeting of the forum. But neither were they willing to endorse New Jersey's view of the stream-of-commerce doctrine, as they concluded it would "abandon the heretofore accepted inquiry" into the relationship between the defendant and the forum. J. McIntyre, 131 S. Ct. at 2793 (Breyer, J., concurring in the judgment). According to the concurrence, the defendant's activities in J. McIntyre failed to establish personal jurisdiction under any articulation of the stream-of-commerce theory and thus the case could be resolved under the court's existing precedents, in particular World Wide Volkswagen Corp., 444 U.S. at 297-98. J. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment); State v. LG Elecs., Inc., 185 Wn. App. 394, 417-19, 341 P.3d 346 (2015), petition for review granted, No. 91391-9 (Wash. June 3, 2015). The concurrence rejected the New Jersey court's approach as too "absolute." J. McIntyre, 131 S. Ct. at 2793 (Breyer, J. concurring in the judgment). "None of our precedents" finds that a single isolated sale of a product in a State reflects a relationship between the defendant and the forum sufficient to support jurisdiction over an out-of-state defendant, "even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place."

J. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment); AU Optronics, 180 Wn. App. at 918-19.

Justice Breyer discussed the three separate opinions of Justices O'Connor, Brennan, and Stevens analyzing the stream-of-commerce metaphor in Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). Justice O'Connor's opinion, he noted, would require "'something more'" than simply placing a product into the stream of commerce, even if the defendant is aware that the stream may or will sweep the product into the forum State. J. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment). Justice Brennan's opinion would allow jurisdiction where a sale in a State is part of "'the regular and anticipated flow'" of commerce into the State but not where that sale is only an eddy, i.e., an isolated occurrence. J. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment). Justice Stevens' opinion indicated that "'the volume, the value, and the hazardous character'" of a good may affect the jurisdictional inquiry and it emphasized Asahi's "'regular course of dealing.'" J. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment). The isolated sale of a single metal shearing machine to one company in New Jersey did not satisfy the stream-of-commerce analysis articulated by any of these separate opinions in Asahi. Where there is no regular flow or regular course of sales into the forum state, and no "'something more,' such as special state-related design, advertising, advice, marketing, or anything else," the stream-of-commerce doctrine does not support personal jurisdiction. J. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment).

We have applied Justice Breyer's concurring opinion in two recent cases, AU Optronics and LG Elecs. In AU Optronics, the defendant was an out-of-state manufacturer of display panels. The display panels became components of appliances that were sold in Washington through a regular flow or regular course of sales. AU Optronics, 180 Wn. App. at 925. Considering the volume of sales of these finished products in Washington, we rejected the defendant's argument that there was an insufficient showing of purposefulness. AU Optronics, 180 Wn. App. at 925. In LG Elecs., we similarly permitted the exercise of personal jurisdiction based on a regular flow of sales into Washington. LG Elecs., 185 Wn. App. at 422-25. Purposeful availment will be found "if the incidence or volume of sales into a forum points to something systematic—as opposed to anomalous." LG Elecs., 185 Wn. App. at 419.

Here, too, we conclude a Washington court may assert specific personal jurisdiction over Special, a component supplier, under the stream-of-commerce doctrine. Special's product was a known hazardous material, one of the factors mentioned by Justice Stevens in Asahi as affecting the jurisdictional inquiry. Special's asbestos was supplied for use in making large quantities of pipe to be distributed through existing channels of interstate commerce, including channels regularly flowing into the State of Washington. It is the regular flow or course of sales that distinguishes the facts here from the facts of J. McIntyre. A plaintiff is not required to prove both a regular flow *and* "something more."

This result is consistent with the stream-of-commerce analysis articulated in World-Wide Volkswagen Corp., 444 U.S. at 286. There, the Court rejected a

plaintiff's attempt to have an Oklahoma court exercise personal jurisdiction over a New York seller based on "the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." World-Wide Volkswagen Corp., 444 U.S. at 295. On the other hand, if the sale of a defective product in the forum state arises from efforts to serve the market for that product in other states "directly or indirectly," the exercise of jurisdiction in the forum state may be consistent with the Due Process Clause.

> This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. . . .
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> . . . Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Cf. Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

World-Wide Volkswagen Corp., 444 U.S. at 297-98 (some citations omitted).

Special claims that even when a steady current of sales carries a product such as asbestos-cement pipe into the forum state, personal jurisdiction over the asbestos supplier depends on the supplier's actual knowledge that the asbestos would ultimately arrive in the forum state as a component. Special knew that its

asbestos was being used to make pipe at CertainTeed's plant in Santa Clara, California. But the record does not prove Special had actual knowledge that CertainTeed distributed its pipe outside California. According to Special, its dealings with the Santa Clara plant are sufficient purposeful contacts to allow California to assert jurisdiction but not Washington. The regular flow of Special's asbestos into Washington does not by itself support the assertion of jurisdiction by Washington, Special argues, because it does not establish that Special had contacts with Washington that were purposeful in nature.

The governing precedents do not require a plaintiff to prove a component supplier's actual knowledge of the manufacturer's plans to ship the finished product into the forum state. AU Optronics, World-Wide Volkswagen Corp., and Justice Breyer's concurrence in J. McIntyre require objective facts evidencing a regular flow or regular course of sales by which the product enters the forum state. As in AU Optronics, Special had a "large volume of expected and actual sales." AU Optronics, 180 Wn. App. at 924. The volume of Special's shipments of asbestos to CertainTeed's Santa Clara manufacturing plant, coupled with the volume of finished pipe distributed into Washington by CertainTeed, signifies that Special purposefully availed itself of the protection of Washington law.

This reasoning is supported by Gray v. American Radiator, a leading case on the application of the stream-of-commerce doctrine to a nonresident supplier of components. Gray, 22 Ill. 2d at 442, cited with approval in World-Wide Volkswagen Corp., 444 U.S. at 298. In Gray, the nonresident defendant in an Illinois court was Titan, an Ohio manufacturer. Titan negligently manufactured

and marketed a defective valve. The valve was later incorporated into a water heater by a Pennsylvania company. The water heater was sold to an Illinois resident, who was injured in Illinois when the heater exploded. Titan, the Ohio manufacturer, had no other contacts with Illinois. Titan argued, as Special does here, that the mere occurrence of an injury caused by its product in Illinois was insufficient to support personal jurisdiction by the Illinois court. But Titan did not claim that the use of its product in Illinois was an isolated occurrence. The court recognized that "the relevant inquiry is whether defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum." Gray, 22 Ill. 2d at 440. Based on the inference that there was substantial use in Illinois of hot water heaters incorporating Titan's valves, the court determined that Titan purposefully availed itself of the protection of Illinois law, directly or indirectly:

> While the record does not disclose the volume of Titan's business or the territory in which appliances incorporating its valves are marketed, it is a reasonable inference that its commercial transactions, like those of other manufacturers, result in substantial use and consumption in this State. To the extent that its business may be directly affected by transactions occurring here it enjoys benefits from the laws of this State, and it has undoubtedly benefited, to a degree, from the protection which our law has given to the marketing of hot water heaters containing its valves. Where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.
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> With the increasing specialization of commercial activity and the growing interdependence of business enterprises it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action

> arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this State to justify a requirement that he defend here.

Gray, 22 Ill. 2d at 442.

Special does not claim that the presence of its asbestos on the construction sites in Washington where Donald Noll cut pipe was an isolated event. Whether Special knew that CertainTeed's Santa Clara plant was shipping pipe into Washington is not dispositive. Special's contacts with Washington were systematic. They were not random, isolated, fortuitous, attenuated, or anomalous. Pipe containing Special's asbestos flowed into Washington in the regular stream of commerce, not in a mere eddy. Special benefited indirectly from the laws of Washington that protected the marketing, sale, and use of asbestos pipe in Washington during the years that Donald Noll was exposed to it. Having accepted that benefit, Special cannot claim that its relationship with Washington lacked purpose.

Reversed.

Becker, J.

WE CONCUR:

Leach, J.

Supreme Court No. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 71345-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

CANDACE NOLL,

Appellant,

v.

SPECIAL ELECTRIC COMPANY, INC.,

Respondent.

DECLARATION
OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. I caused to be delivered *Respondent's Petition for Review and Declaration of Service* via email & U.S. Mail on the following parties at the last known address as stated:

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Dated this 28th day of July, 2015.

Patti Saiden, Legal Assistant