

ORIGINAL

In the

Supreme Court of the United States

OFFICIAL TRANSCRIPT OF PROCEEDINGS • [REDACTED]

ALLSTATE INSURANCE COMPANY)

PETITIONER,)

V.)

LAVINIA HAGUE, ETC.)

RESPONDENTS.)

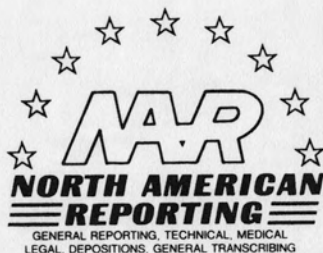
No. 79-938

Washington, D.C.

October 6, 1980

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Washington, D.C.

(202) 347-0693

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -:
3 ALLSTATE INSURANCE COMPANY :

4 :
5 Petitioner, :

6 v. :

7 LAVINIA HAGUE, ETC. :

8 Respondents. :
9 - - - - -:

10 Washington, D.C.,

11 Monday, October 6, 1980

12 The above-entitled matter came on for oral argument at
13 at 11:12 o'clock a.m.

14 BEFORE:

15 HON. WARREN E. BURGER, Chief Justice of the United States
16 HON. WILLIAM J. BRENNAN, JR., Associate Justice
17 HON. BYRON R. WHITE, Associate Justice
18 HON. THURGOOD MARSHALL, Associate Justice
19 HON. HARRY A. BLACKMUN, Associate Justice
20 HON. LEWIS F. POWELL, JR., Associate Justice
21 HON. WILLIAM H. REHNQUIST, Associate Justice
22 HON. JOHN PAUL STEVENS, Associate Justice

23 APPEARANCES:

24 MARK M. NOLAN, ESQ., 2300 American National Bank Building,
25 St. Paul, Minnesota 55101; on behalf of Petitioner.

ANDREAS F. LOWENFELD, New York University School of Law,
40 Washington Square South, New York, New York 10012;
on behalf of Respondents.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

MARK M. NOLAN, ESQ.,
on behalf of the Petitioner

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ANDREAS F. LOWENFELD, ESQ.,
on behalf of the Respondents

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MARK M. NOLAN, ESQ.,
on behalf of the Petitioner -- Rebuttal

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in Allstate Insurance Company against Lavinia Hague.

Mr. Nolan, you may proceed when you are ready.

ORAL ARGUMENT OF MARK M. NOLAN

ON BEHALF OF THE PETITIONER

MR. NOLAN: Mr. Chief Justice, and may it please the Court:

My name is Mark Nolan. I represent Allstate Insurance Company who appears today as Petitioner on writ of certiorari to the Minnesota Supreme Court.

The judicial trail that leads us here today began when the Respondent, which is the representative of the estate of Mr. Ralph Hague -- it began when that representative began a national --

QUESTION: A Minnesota representative?

MR. NOLAN: Pardon?

QUESTION: A Minnesota representative?

MR. NOLAN: A Minnesota representative.

QUESTION: Was there ever a probate in Wisconsin?

MR. NOLAN: The record is unclear but I think we can presume that there was, because at the time of the incident they resided there and they owned a home there.

QUESTION: What was the purpose of the Minnesota probate?

1 MR. NOLAN: I think -- perhaps I could answer this --

2 QUESTION: Perhaps we could ask your opponent on this
3 one.

4 MR. NOLAN: I think it's best to ask my opponent.
5 I think it was to -- that the actual statute in Minnesota is to
6 appoint a trustee to bring a wrongful death action. I think
7 what they did is they appointed a representative out of a
8 probate to bring the wrongful death action, or to do all things
9 necessary.

10 It's indicated in their brief, at any rate, that this
11 action is the main asset of that Minnesota estate, as indicated
12 on page 11 of their brief.

13 QUESTION: That's why I asked whether there was a
14 Wisconsin probate.

15 MR. NOLAN: Yes. That also indicates that there was
16 a Wisconsin probate, that this is the main asset of whatever is
17 in the Minnesota estate.

18 At any rate, we're here today because Minnesota chose
19 its law to say that the representative could "stack" three
20 coverage -- three uninsured motorist coverages that appeared in
21 Mr. Hague's Wisconsin insurance policy. Our position is that
22 Minnesota's choosing of its law in this instance is repugnant
23 to Article 4, Section 1 of the Full Faith and Credit Clause of
24 the Constitution; the Fourteenth Amendment section 1, Due Pro-
25 cess, and the line of cases which have interpreted those sections

1 sections as they apply to choice of law.

2 Now, in order that you know where I'm going, just in
3 case it may not always appear clear, let me give you a brief
4 table of contents as to how I intend to proceed here. I will go
5 through the facts because they're brief and important. I'll
6 break out what contacts go to each state quantitatively, then
7 qualitatively. I'll discuss those briefly in terms of this
8 Court's decisions on choice of law. And then, because I antici-
9 pate that by counsel's argument in that this Court will have a
10 larger, an interest in the bigger picture of choice of law,
11 I'll discuss briefly in restatement, and more importantly,
12 Professor Leflar's article because it's somewhat representative
13 of what people are saying in choice of law today, and it seems
14 to be what the Minnesota Court relied on more than cases of this
15 Court.

16 QUESTION: Well, before you get into that let me ask a
17 question or two. Are insurance rates of Allstate higher in
18 Wisconsin than they are in Minnesota, or is there any differ-
19 ence?

20 MR. NOLAN: I don't know, and the record doesn't re-
21 flect.

22 QUESTION: What happens when a policy is issued, for
23 instance, in the District of Columbia, where automobiles almost
24 daily cross over into Virginia and Maryland? Do they take into
25 account experience in those states as well as in the District,

1 and are rates affected?

2 MR. NOLAN: I don't know the answer to that, but
3 Minnesota courts seem to indicate that they are and they seem
4 to make the admission that they are. They did in the case of
5 Bolgrean v. Stich, wherein they indicated that the insurer is
6 interested in the Minnesota risk as opposed to another state's
7 risk.

8 QUESTION: Suppose this accident had taken place in
9 Red Wing, on the Minnesota side of the Eisenhower Bridge. All
10 other facts being the same, would you be here?

11 MR. NOLAN: I think that Watson might preclude us from
12 being here: this Court's case, Watson v. Employer's.

13 QUESTION: And the accident took place on the, just
14 barely on the Wisconsin side? By "barely," I mean within five
15 miles.

16 MR. NOLAN: It was a bordering -- yes, it was a bor-
17 dering state. But I think that in conflicts of law, the state
18 line is very important and must be honored.

19 QUESTION: Well, it's like any other line-drawing,
20 isn't it? You have a line or you don't have a line?

21 MR. NOLAN: That's right. And it's especially impor-
22 tant here in terms of the Full Faith and Credit Clause.

23 Briefly, the facts of this case are that on July 1,
24 1974, Mr. Hague resided with his family in Wisconsin. He had
25 traveled for 15 years to work in Minnesota but he resided in

1 Wisconsin with his family. On that date he was riding as a
2 passenger on his son's motorcycle when it was struck in the rear
3 by another Wisconsin resident. Mr. Hague, the son, and the per-
4 son hitting him were Wisconsin residents; the accident took
5 place on a Wisconsin road. Neither his son, whose cycle he was
6 on, nor the person who hit him, had insurance. Therefore, any
7 insurance available in wrongful death action came from
8 Mr. Hague's, or would come from Mr. Hague's uninsured motorist
9 coverage.

10 In Wisconsin you can stack that; in Minnesota you can-
11 not. Two years later Mrs. Hague -- two years later, I mean in
12 1976, approximately two years after this accident, Mrs. Hague
13 moved to Minnesota and began this action; contemporaneously
14 with moving here she was appointed the representative. Her
15 capacity as plaintiff is as a representative.

16 The contacts in that setting are these. The contacts
17 in Minnesota, that the Minnesota court felt significant, were,
18 number one, that Mr. Hague had traveled to Minnesota for some
19 15 years prior to this accident; that Allstate did business in
20 the State of Minnesota; that Mrs. Hague at the time she began
21 this action was a resident of the State of Minnesota; and that
22 now Minnesota had some interest in the heirs of this estate.

23 The contacts with the State of Wisconsin are that
24 with regard to the occurrence, it involved three Wisconsin resi-
25 dents, it took place on Wisconsin roads which presumably are

1 regulated by the State of Wisconsin.

2 The action before you is a contract declaratory judg-
3 ment action. This contract was applied for, written, and
4 delivered in the State of Wisconsin; most importantly, written
5 to conform with Wisconsin's law which had \$15,000 worth of
6 minimum coverage. That is why this particular type of coverage
7 was written and all the premiums on this insurance policy were at
8 all times paid from the State of Wisconsin.

9 Looking at those contacts qualitatively, the Minnesota
10 contacts, the fact that Minnesota does, or Allstate does busi-
11 ness in the State of Minnesota is important to jurisdiction but
12 it does not give Minnesota an interest as to what Allstate does
13 with contracts in Wisconsin. It's -- if that were true, you'd
14 be in somewhat the same situation as in Savchuk v. Rush, where
15 they tried to tie some significance to State Farm being in all
16 50 states and Justice White dismissed that as not being a sig-
17 nificant test for jurisdiction purposes.

18 The other tests that Mr. -- or one other test, that
19 Mr. Hague drove to Minnesota, has really nothing to do with
20 either this transaction, in that the transaction was written
21 to comply with the Wisconsin statutes as a Wisconsin risk. It
22 has nothing to do with this occurrence because there's no --
23 there is agreement on all sides that Mr. Hague was not going to
24 work, coming from work, having anything to do with work at the
25 time he was injured.

1 QUESTION: Mr. Nolan, you referred to Savchuk and I
2 think Volkswagen is probably along the same lines. That really
3 is the exercise of judicial jurisdiction --

4 MR. NOLAN: Yes.

5 QUESTION: -- over a party. What you're talking about
6 is the Home Insurance, Delta Pine line that raises -- that say
7 even if you have judicial jurisdiction, the Due Process Clause or
8 the Full Faith and Credit Clause limits the right of one state
9 to wholly impose its laws even on a party that conceivably is
10 before it for jurisdictional purposes.

11 MR. NOLAN: That's correct. I think that along
12 those lines I think that choice of law cases have not had as
13 much exposure as jurisdiction cases, but I think we would argue
14 that they're perhaps more important in that jurisdiction estab-
15 lishes a convenience test, where you can hale a person into
16 court, where choice of law really decides what is going to be
17 the ultimate outcome, the disposition of matters. It's a little
18 bit like saying that jurisdiction may decide where a person is
19 going to be hung, but choice of law would decide whether he is
20 going to be hung.

21 QUESTION: Did the policy have any provision as to
22 which law would apply?

23 MR. NOLAN: No it had no -- no clause in it.

24 QUESTION: That would have been an easy way out for
25 Allstate, wouldn't it?

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MR. NOLAN: Yes, it would.

QUESTION: As to both states and both parties, they were equally accessible; right? There was no problem in getting ahold of Allstate in Wisconsin?

MR. NOLAN: No.

QUESTION: So there was no problem there.

MR. NOLAN: No.

QUESTION: In what county of Wisconsin were --

MR. NOLAN: Pierce County, I believe we're talking about. In terms of those -- the cases that --

QUESTION: That's a border county?

MR. NOLAN: Pardon?

QUESTION: That's a border county?

MR. NOLAN: That is a border county; yes.

QUESTION: This wouldn't go as far as Alaska, would it?

MR. NOLAN: Pardon?

QUESTION: Wouldn't go as far as Alaska, would it?

MR. NOLAN: You mean, this case? No. If I could perhaps survey the cases, those cases in which this Court has said that a forum court cannot apply its own law, the ones that I think are most pertinent are Dick v. Home Insurance, Yates v. John Hancock, Delta Pine; those would support our position. In both of those, this Court reversed a forum court that applied its own law because it said that the contacts were either too

1 slight or casual; or that, in Yates, by applying the Georgia
2 jury, letting the matter go to the jury, did not give full faith
3 and credit to New York's law.

4 Those -- more importantly, I should probably distin-
5 guish those cases which, in which you have let the forum court
6 apply its own law over the contracting, the state of contract-
7 ing. The two that are the most prominent are Watson and Clay.
8 Now, those are distinguished from this case.

9 First of all, Watson. In Watson you allowed direct
10 action in Louisiana. The injury took place in Louisiana to a
11 resident of Louisiana and the Louisiana court applied its direct
12 action statute without regard to the policy of insurance which
13 was made and delivered in another state, which indicated you
14 could not do that. This Court said that was all right for
15 Louisiana to do that and in so doing recognized that Louisiana
16 had a significant contact in interest with this, with the mat-
17 ter under consideration because the person at the time they were
18 injured was a resident of Louisiana and the injury took place in
19 Louisiana. Neither of those things happened in Minnesota.

20 With regard to Clay, Clay was -- is perhaps somewhat
21 analogous in that we're talking about an ambulatory contract.
22 It was a contract on personal property. I think it was drawn
23 in Illinois. Mr. Clay, after it was made and drawn in Illinois,
24 moved to Florida, lived there for two years, paid insurance
25 premiums from there, and then after that time the loss occurred.

1 Florida applied its law to nullify a contract provision in that
2 Illinois contract which would have limited actions to a certain
3 period of time which had now expired, in order to give its resi-
4 dent the right to recover on this insurance policy.

5 That case came up to this Court twice, but finally
6 this Court indicated that because Mr. Clay had moved to
7 Wisconsin, in that the loss took place in -- or not Wisconsin,
8 Florida; and the loss took place in Florida; and presumably that
9 the company accepted premiums from Florida for that two years;
10 that not only did Florida have an interest in this matter,
11 but it didn't upset anybody's justified expectations because
12 the premiums came and everybody knew the risk had moved to
13 Florida.

14 That did not happen in this case. In this case all
15 of the contacts which this Court has previously indicated would
16 lean toward the choice of that state's laws are in Wisconsin.

17 With regard to Professor Leflar's discussion, I think
18 perhaps we should touch upon it because it seems this has be-
19 come a favorite of law review articles and this Minnesota
20 Supreme Court certainly gave that more weight and credence than
21 they did the decisions of this Court.

22 Professor Leflar indicates a five-stage test to
23 deciding choice of law: predictability of results, maintenance
24 of governmental order, simplification of judicial task, govern-
25 mental interest, and better rule of law. Now, Minnesota somehow

1 applied that test and got to their law. I think that if you
2 really look at what Professor Leflar has indicated, number one,
3 Minnesota did that without looking to the constitutional safe-
4 guards, and that's why we're here today.

5 But even if you were just to look at Professor Leflar's
6 test as it applies to the fact that now we have to look at the
7 interests of the states and we have a more fluid society, that
8 sort of approach, it still leans to Wisconsin. In other words,
9 predictability of results, his first test, very important in a
10 contract dispute. This is a contract dispute. People have the
11 right -- this is very similar to the justified expectations
12 test of the restatement -- people have a right to have, unless
13 there is some substantial overriding interest of an opposing
14 state, they have a right to have the law of the state they
15 intended to have, but in --

16 QUESTION: Minnesota is free to adopt Professor
17 Leflar's test whether we think it is a wise one or not, unless
18 it somehow offends the Constitution.

19 MR. NOLAN: Exactly. And not only -- the only point
20 that I raise it today is because the Minnesota court seems to
21 say that there is some -- we should be more interest-oriented
22 in interest analysis in these types of choice of law. I am
23 saying that even if they wanted to take that approach, they
24 could apply Leflar and they still should have ended up with
25 Wisconsin law.

1 QUESTION: This brings me back to my rate question.
2 Had this policy been issued to a Minnesota decedent or a
3 Minnesota resident, would the policy be any different than the
4 one that was issued to the decedent?

5 MR. NOLAN: Would the wording of the policy be any
6 different, you mean?

7 QUESTION: Or the rate be any different?

8 MR. NOLAN: I personally do not know, but, again, the
9 Minnesota court indicated in their opinion, they seem to con-
10 cede that it would. In other words, I think on page 49 of their
11 decision, they indicate that Wisconsin has a legitimate inter-
12 est in keeping insurance premiums low.

13 QUESTION: Well, sometimes policies do vary from state
14 to state, and I -- but I wondered whether this record showed
15 anything on that. I take it it doesn't. It doesn't show any-
16 thing about it.

17 MR. NOLAN: No, the record was submitted on stipulated
18 facts and it did not include that and the Minnesota Supreme
19 Court did not ask for that, but they -- I think the law of the
20 case would presume that they felt it would make a difference.

21 QUESTION: If it did, if Minnesota rates were higher,
22 that would have been a factor in your favor had it been in the
23 record.

24 MR. NOLAN: Yes. Yes.

25 QUESTION: Would the, would such an element as the

1 age in which one state sold intoxicating liquors to persons have
2 some bearing on rates? That is, if one state had 18 years and
3 the other state had 21 years, are those the kinds of factors
4 that enter into the ratemaking process?

5 MR. NOLAN: I frankly do not know. To the extent that
6 it could be shown that more accidents occur because of that and
7 if it could be shown that states do write to the total risk of
8 that state -- in other words, how many claims are brought, it
9 would.

10 QUESTION: On the basis of massive information on the
11 subject, couldn't any court take judicial notice that intoxi-
12 cating liquors have a very serious effect on automobile acci-
13 dents?

14 MR. NOLAN: Yes, I think -- yes. I think they could,
15 Your Honor, and I think in the same respect in Justice Blackmun's
16 case they could also take judicial notice that it would likely
17 make the premium higher in the State of Minnesota if Minnesota
18 has a policy which in essence gives out more benefits on the
19 same insurance contract language.

20 QUESTION: Mr. Nolan, if you would help me with the
21 other -- I was thinking about the contractual aspect of this for
22 a moment. Could you help me with this concept of stacking that's
23 kind of at the bottom of this, I must confess I didn't think
24 about it enough before argument. What that means, I gather, is
25 that the victim who has a policy, has an uninsured motorist

1 clause in it and has two policies may recover on both policies.
2 Is that the way it --

3 MR. NOLAN: Right.

4 QUESTION: And there was -- or are there three poli-
5 cies here?

6 MR. NOLAN: Three policies here.

7 QUESTION: And you're saying that in Wisconsin he cou
8 could only recover on one because Wisconsin in effect as a mat-
9 ter of law imposes a condition in the contract that says, even
10 if you take out three or four more policies with uninsured
11 motorist clauses in them, they don't mean what they appear to
12 say?

13 MR. NOLAN: But -- well, it's --

14 QUESTION: Is that what it is?

15 MR. NOLAN: They don't quite phrase it that way.

16 QUESTION: I know, but I'm just -- that's, I'm just
17 trying to see what kind of obligation is being changed here by
18 Minnesota.

19 MR. NOLAN: Minnesota -- take the -- in both con-
20 tracts, I think it's safe to say, whether it was written in
21 Minnesota, it would merely say that under this coverage you have
22 uninsured motorist coverage of X amount, \$15,000 in this case,
23 on one vehicle. It was three coverages. Not three coverages
24 on one person, it was three coverages --

25 QUESTION: I see.

1 MR. NOLAN: -- on three separate vehicles. And Wis-
2 consin would say, you may take the coverage from one vehicle and
3 apply it. Minnesota would say, you may take the coverage from
4 all three vehicles for which you've paid a premium and stack it
5 so as to --

6 QUESTION: It's a question of whether the policy should
7 be construed as limited to the vehicle described in that policy
8 or without saying anything pick up other vehicles and additional
9 coverage, then?

10 MR. NOLAN: That's right.

11 QUESTION: I see.

12 MR. NOLAN: That's right.

13 QUESTION: I think that you said the other way around.

14 QUESTION: Mr. Nolan, a good many states, I think, re-
15 quire uninsured motorist insurance.

16 MR. NOLAN: That's correct.

17 QUESTION: Do either of these states require it as a
18 matter of law for policies written in them?

19 MR. NOLAN: I believe they do. There is -- my only
20 hesitation is that at various times in the middle '70s there was
21 differences, I think, between the two states as to whether you
22 had to offer it as opposed to whether you had to get a rejec-
23 tion of it, of the option. And I'm not sure of the distinction
24 between the two states in that regard. But in --

25 QUESTION: Do you know whether they were different?

1 I think you are saying you don't know whether they had it.

2 MR. NOLAN: I don't know with regard to that, to the
3 part of whether in Wisconsin and Minnesota at the same time the
4 law was that you had to reject uninsured motorist or you got it
5 as opposed to just having to make it available.

6 QUESTION: Wouldn't that appear from the statutes of
7 the two states or from the regulations of the insurance commis-
8 sioners?

9 MR. NOLAN: Yes, it would.

10 QUESTION: It'd be a matter of record somewhere?

11 MR. NOLAN: It would be a matter of record.

12 QUESTION: In this case, of course, the uninsured
13 person, or the person who had the policy, wasn't in any of the
14 three vehicles on which he had the insurance?

15 MR. NOLAN: No, he was not, and both the vehicles
16 involved were uninsured. The -- his son's vehicle, the motor-
17 cycle, his son had other policies, but they didn't cover this
18 vehicle. Yes, the insurance that they're looking to is outside
19 of the vehicles involved in this accident.

20 QUESTION: Right.

21 MR. NOLAN: The last area -- or excuse me, I guess I
22 wandered from Professor Leflar.

23 At any rate, Minnesota somehow got to applying
24 Professor Leflar instead of the U.S. Constitution, but even
25 Professor Leflar is really a contacts test. His two most

1 important tests, maintenance of interstate order in governmental
2 interest, are at the heart of the contacts tests. In other words
3 in terms of maintenance of interstate order, if Minnesota is to
4 apply their law on the fragile contacts that they have with this
5 case, then, in essence, they are chipping away at the sove-
6 reignty of Wisconsin to make laws and to judicially interpret
7 those laws. They're giving it no credence, they're not re-
8 specting that sovereignty.

9 With regard to his test of governmental interest, you
10 don't have significant governmental interest if you don't have
11 contacts with the matter, significant contacts, with either the
12 transaction or the occurrence. Minnesota in this case seized
13 upon two very dangerous contacts to deem them significant.
14 By that I mean that two of the four that they even talked about
15 as being contacts, the fact that at the time the action was com-
16 menced and the fact that at the time the action was commenced
17 they were now concerned with the heirs of this estate, are
18 dangerous contacts in choice of law decisions because those are
19 the type of contacts which may be developed voluntarily, will-
20 fully, after the occurrence giving rise to the dispute.

21 In other words, if you're going to have a rule that's
22 going to be predictable, and to not promote forum shopping, you
23 really have to -- perhaps the case will arise where you cannot
24 disregard an after-acquired contact, but you have to look very
25 closely at those, and in most instances just freeze the facts

1 at the time of the occurrence or the time of the transaction,
2 because if you can deem significant a contact like Mrs. Hague
3 moving to Minnesota, and especially in this, a representative-
4 type action, then let's say in this case Mrs. Hague didn't even
5 move to Minnesota. They just picked a Minnesota contact.

6 QUESTION: Mr. Nolan, is there a shortage of --
7 in Minnesota?

8 MR. NOLAN: No, I think there's an abundance of them.

9 QUESTION: I mean, I was just wondering. Maybe I was
10 trying to find a reason for this.

11 MR. NOLAN: I'd like to save the rest of my time, if
12 there are no questions, for rebuttal.

13 MR. CHIEF JUSTICE BURGER: Mr. Lowenfeld.

14 ORAL ARGUMENT OF ANDREAS F. LOWENFELD

15 ON BEHALF OF THE RESPONDENT

16 MR. LOWENFELD: Mr. Chief Justice, and may it please
17 the Court:

18 I'd like, if I may, to open by answering the question
19 put by Justice Blackmun about probate and the relations of the
20 parties. There was probate in Wisconsin. It happened the
21 decedent did own a vacant parcel of land there. There was a
22 joint tenancy homestead which passed outside of probate.

23 In Minnesota, there were a variety of interests at the
24 time. The decedent worked in Minnesota. He had a profit-shar-
25 ing retirement plan, he had some trust benefits, some medical

1 benefits, he had some accrued compensation payroll where he had
2 worked that wasn't due yet, and he had life insurance proceeds.
3 As you undoubtedly know better than I do, Justice Blackmun, the
4 place where the accident happened near where they lived, Hager
5 City, is a very small place. Red Wing, which is where he worked,
6 is the larger place. It's where -- none would go shopping, and
7 so on. In fact, when he was lying on the ground, the ambulance
8 came and brought him to Red Wing to the hospital there.

9 If, for example, he had not been dead on arrival and
10 there had been, let's say, two or three weeks of medical care,
11 intensive care, that kind of thing, obviously one would have
12 thought that Minnesota has an interest in recovering that kind
13 of thing. That's one of the dangers, I think, in the notion
14 that at the moment of impact of the car and the motorcycle you
15 freeze all events.

16 QUESTION: Do these distances make a difference in
17 applying choice of law concepts or do lines, boundaries on maps?

18 MR. LOWENFELD: Well, I'm suggesting, Your Honor, that
19 in a constitutional sense what you have to look at is the
20 interest of the two states.

21 QUESTION: Well, what if the accident had happened
22 at, up at Superior, Wisconsin, instead of where it did, 150
23 miles north? Any difference?

24 MR. LOWENFELD: I think not necessarily, if it turns
25 out that --

1 QUESTION: Or make it on the other end. Put it over
2 in Menominee, Wisconsin, in the far end of the state.

3 MR. LOWENFELD: I'm sorry to say I'm not as prepared
4 on the geography of Wisconsin as Mr. Chief Justice.

5 QUESTION: One is on the east and one is on the west.

6 MR. LOWENFELD: But I think what we're focusing on
7 what the Supreme Court of Minnesota focused on, was its own
8 interests. Now, what were its interests?

9 Its interests were primarily that the typical interest
10 in compensation law — that is to say, compensation for injured
11 parties and in the case of death, compensation for the survi-
12 vors, in this case the widow who, as is perfectly natural,
13 after the death of her husband, she moved in with one of her
14 sons. It wasn't a very long move, as it happened, but the son
15 lived in Minnesota. Subsequently she remarried, also in
16 Minnesota.

17 QUESTION: In Red Wing?

18 MR. LOWENFELD: I beg your pardon?

19 QUESTION: In Red Wing? Do you know?

20 MR. LOWENFELD: I think the son was in Red Wing. She
21 subsequently married a man who lived in Savage.

22 QUESTION: She was a resident there when the Minnesota
23 probate was begun?

24 MR. LOWENFELD: That's correct.

25 QUESTION: And how long -- does the record show how

1 long she had been a resident?

2 MR. LOWENFELD: I think since very soon after the
3 accident. She moved within a couple of weeks, which was '74, it
4 was July, '74, was the accident.

5 QUESTION: Is there any inference that the move was
6 made in order to bring a, or to institute a Minnesota probate
7 and bring this action?

8 MR. LOWENFELD: None whatever.

9 QUESTION: You're saying that your case might well be
10 different if the decedent had lived in Madison, which is 150
11 miles from the Minnesota line, and commuted to Minnesota every
12 day to work?

13 MR. LOWENFELD: No, I don't think I would say that,
14 Justice Rehnquist. I'm saying the case would have been differ-
15 ent if she hadn't made a bona fide move to Minnesota before she
16 brought suit. The issue of the fact that it was so close to
17 the boundary line is, I think, important in the context of the
18 expectation. That is to say, the insurance company knew that
19 the decedent drove every day for 15 years from his home, drove
20 across the river to work. And as the Minnesota Supreme Court
21 found, a substantial portion of the risk was in Minnesota. This
22 was a global policy. It was in that case different, for example,
23 from the Home Insurance against Dick, which is the principal
24 case relied on by my opponent, in which the policy was limited
25 to two particular rivers near Tampico. And if the boat was

1 going to go anywhere else, even in Mexico, it had to have spe-
2 cial permission and a special endorsement for an additional
3 premium from the insurance company. That wasn't this case at
4 all.

5 Now, I think that's -- before I go on to --

6 QUESTION: If the accident had occurred in Minnesota,
7 could she have sued in Wisconsin?

8 MR. LOWENFELD: I believe she could have; yes. She
9 could have sued in either place. There's no question that
10 Allstate does business in all 50 states; indeed, that's in their
11 very name, and in all their commercials.

12 QUESTION: Well, you couldn't sue them in Hawaii,
13 could you?

14 MR. LOWENFELD: I wouldn't have thought so in terms of
15 the rules of forum non conveniens.

16 QUESTION: You mean you do think so, now?

17 MR. LOWENFELD: Well, I think it would be a transitory
18 cause of action. You might get judicial jurisdiction, but
19 undoubtedly a motion to dismiss for forum non conveniens would
20 have been granted in that sense.

21 QUESTION: Well, suppose it wasn't?

22 MR. LOWENFELD: Oh, I suppose in that case suit could
23 have -- if we still believe in transitory actions, I suppose
24 suit could have been brought in Hawaii. I think if the Hawaii
25 court -- that that then would apply its own laws.

1 QUESTION: Well, suppose -- suppose the lady hadn't
2 moved to Minnesota but had simply sued the insurance company in
3 the Minnesota courts. Same question, and the Minnesota court
4 didn't dismiss on forum non conveniens ground. Could it have
5 applied its own law or couldn't it?

6 MR. LOWENFELD: I think the case for application in
7 those circumstances would be very close to arbitrary action.

8 QUESTION: Well, on what --

9 MR. LOWENFELD: And at --

10 QUESTION: What clause of the Federal Constitution
11 would be implicated? The Due Process Clause?

12 MR. LOWENFELD: Yes. I think -- and I think, to an-
13 ticipate a little bit, I was going to come to that later. But
14 the answer to Justice White's questions, and in a sense also to
15 the Chief Justice's question, does one draw lines? Yes, one
16 draws lines but if you consider that that only mandate that
17 this Court has, only mandate since Erie against Tompkins and
18 Klaxon, that is to say, you no longer can say, we'll decide
19 what's the better view; we'll decide whether Professor Leflar,
20 Professor Currie, or some other professor has the best view.
21 That's not within the scope of this Court's decision.

22 The only one that really makes sense now is the
23 Fourteenth Amendment. And what does that safeguard? It safe-
24 guards individuals, including insurance companies, but it
25 safeguards them from arbitrary governmental action. And what's

1 arbitrary in this field? There's no kind of procedural due
2 process, no question that there was service of process and notice
3 tice and all of that. They've a right to be allowed to be heard.

4 A kind of substantive due process may come in when a
5 state applies a law that has nothing to do with it: if Minne-
6 sota applied the law of Hawaii, or if, for example, Minnesota
7 said, we are interested in this case simply because it's in our
8 court, although we never heard of this lady. She doesn't live
9 here, she just found --

10 QUESTION: Is this an argument that choice of law
11 problems as they present Federal constitutional questions, is
12 that only due process? Constitutional questions?

13 MR. LOWENFELD: I think that is essentially our posi-
14 tion. It's true that the Full Faith and Credit Clause is
15 occasionally brought in. I think the workmen's compensation
16 type of cases, Alaska Packers and Pacific Employer's, especially,
17 have put that to rest; Clay as well, and in a sense, as a kind
18 of a fortiori case, your most recent decision last June in
19 Thomas against Washington Gas Light.

20 I think, realistically speaking, Justice Brennan,
21 the Full Faith and Credit Clause doesn't have any place here,
22 remembering that there is no act, there's no statute of
23 Wisconsin that's relevant to this case.

24 QUESTION: Would the case be any different if the
25 insurance policies had express language in them saying that only

1 the coverage under one policy should -- one policy shall pro-
2 vide the maximum uninsured motorist coverage? And then with --
3 Minnesota said those -- we stack in Minnesota, and that's con-
4 trary to our public policy. Would that be a same case?

5 MR. LOWENFELD: If I could make a somewhat roundabout
6 answer to your question, Justice Stevens, I think it's worth
7 putting this whole question of uninsured motorist insurance in
8 context a little bit. Just let me back up for a moment.

9 It starts out in about the mid-60s. In many states
10 there is a drive for compulsory insurance and the insurance
11 industry resists. In other states there's a drive for no-fault
12 insurance, and the insurance industry resists. And what they
13 say, they recognized the problem of the uncompensated traffic
14 victim and they say, here's what we'll do: we'll offer a
15 policy, and then later some states required it, but we'll offer
16 a policy that says the motor vehicle owner and members of his
17 household, as defined in one of those small print clauses, but
18 basically that's right -- will be covered for accidents arising
19 where the fault is that of the uninsured motorist. In other
20 words, it's a kind of hybrid. It's first-party coverage but
21 it's tort; it's negligence, it's not a non-fault coverage.

22 Well, now, what happens is, it works both ways.
23 You are covered, yourself, and your members of your family,
24 wherever you may be, in -- it doesn't have to be your own car,
25 and also occupants of your car are covered. So it happens all

1 the time that, let's say, Mr. A has insurance, including this
2 insurance. He then is driving as a passenger in Mr. B's car
3 when X, the uninsured motorist, negligently runs into them.
4 So A is covered under his own policy, for which he's paid a
5 premium, and he's covered as an occupant under B's policy. Now,
6 then the question is, what does the coverage say?

7 The insurance companies try to make so-called other
8 insurance clauses. And there is a standard clause put out by
9 the National Insurance Bureau, which was followed in this policy
10 and seems to be in all the textbooks and in nearly all the
11 policies. It didn't quite say there shall never be stacking.
12 Apparently, if they'd said that, the insurance commissioners
13 wouldn't have permitted it. But what they tried to do is to
14 say, if there are two policies, one of them is excess to the
15 other and you don't get more than the total limit.

16 Now, then, the stacking cases came up and I was
17 astounded -- if you look at Professor Widiss's book on unin-
18 sured motorist insurance, which came out in 1969 -- there's a
19 1980 supplement -- it's about 400 pages of mostly cases. All
20 this has come up in the last few years. Interestingly enough,
21 about a third of the cases seem to involve Allstate. So they're
22 very fully aware of this. There's no unexpected there. And the
23 majority of states so far -- it's a little hard to have an exact
24 rule, because not all of the cases involve the highest court of
25 the state -- and there are different kinds of stacking. There's

1 There's the guy in the other fellow's car, and there's also the
2 fellow who has more than one policy, or more than one car on the
3 policy.

4 The majority of states that have faced this problem
5 have said, we will permit recovery on each policy since, after
6 all, a premium has been paid on each policy. And there's no
7 windfall, since there is actual -- it only goes up to the
8 provable damages. It's not like having two policies on a boat
9 that sinks and you could recover \$4,000 on a \$2,000 boat. That
10 That's not this at all. This is recovery for accidental injury
11 or death up to your provable damages. In our case we had a
12 52-year-old man who was earning about \$15,000 and had children,
13 so there's no issue here, that he's being somehow given a wind-
14 fall.

15 Now, if I may get back -- a somewhat longwinded
16 answer to your question -- if they had absolutely said, no
17 stacking, I think the Wisconsin insurance commissioner would
18 probably have said, no. Probably the Minnesota insurance com-
19 missioner would have said no. They --

20 QUESTION: Let me rephrase the question. Say that's
21 what the contract said and Wisconsin insurance commissioner
22 said, that's okay.

23 MR. LOWENFELD: Well, it's kind of interesting, if
24 you look at the policy. For instance, the -- Wisconsin, as we
25 know, has direct action statutes. And so the policy here --

1 which is why I think, in fact -- to come back to Justice
2 Blackmun -- the rate's probably higher in Wisconsin rather than
3 lower. And the policy says no one can sue the insurance com-
4 pany except for injuries in Wisconsin.

5 Now, you know that's not going to stand up. If a
6 Wisconsin driver comes --

7 QUESTION: The express language I'm suggesting is
8 no-stacking express language that only one policy shall afford
9 uninsured motorist coverage even though there are three vehicles
10 and three policies. And that was express, and the parties
11 spelled it out more or less as they had in the Home Insurance
12 Company case on the time problem. Would not the Home Insurance
13 case control in that hypothetical?

14 MR. LOWENFELD: Well, it's possible. Courts all
15 around the country, and Minnesota is a good example, have
16 found ways around a variety of these clauses. Sometimes they
17 say they're ambiguous. If it were unambiguous, as you suggest,
18 Justice Stevens, they might say it's against public policy.
19 I'm not certain. But certainly it would be a stronger case for
20 Allstate than this one.

21 QUESTION: Well, Home Insurance was the case of a
22 state court that tried to find a way around a policy and it was
23 reversed by this Court, wasn't it?

24 MR. LOWENFELD: That's right. But if you notice,
25 several things are very different about Home Insurance and

1 this case. Perhaps the most important one for our present pur-
2 poses is, that under the present rulings of this Court there
3 would have been no jurisdiction in Home Insurance. Home Insur-
4 ance against Dick is really the grandfather of Seider and Roth,
5 and Rush and Savchuk, and all of those cases. It was a quasi-
6 in-rem action brought by taxing the alleged res, which was the
7 obligation to reinsure, of a New York company that was doing
8 business in Texas. That is to say, Anglo-Mejicana, which was
9 the actual insurer, had no connection whatever. That's one
10 point.

11 Second, there was a choice of law clause. It said,
12 this policy will be governed by the Commercial Code of Mexico.
13 And third, as I already said, it specifically said, the follow-
14 ing rivers are the only ones covered by this policy. So those
15 are the three differences.

16 And I guess it is right, that if we had that again,
17 that probably still is arbitrary action.

18 QUESTION: Mr. Lowenfeld, I think what I'm trying to
19 get at is whether the issue is affected at all by the clarity
20 and certainty of the obligation that was created in the other
21 state, whether it depends to a certain extent on a construe in
22 that state's law as opposed to giving effect to a very plainly
23 assumed obligation by parties who negotiate a contract. Is
24 that relevant at all?

25 MR. LOWENFELD: I think it's relevant, but I don't

1 think, Justice Stevens, that it is conclusive. Because, one,
2 it's understood that this is nationwide, in fact, continental-
3 wide, all of North America, policy. Second, that the insurance
4 company itself does business -- in fact, I think it's the
5 fourth largest insurer with over 200,000 policies -- in Minne-
6 sota. If you recall, for example, the quite interesting opinion
7 in the Watson case by Justice Frankfurter, in which he has a
8 kind of alternative argument to the one used by Justice Black.
9 He says the insurance company knew all about this. It came
10 into Louisiana, it took advantage of the privilege of doing
11 business there, and it's bound by the laws.

12 I think that same argument applies to Allstate in
13 this case. So that if -- in other words, if the Minnesota
14 Supreme Court had then said in the present case, Hague against
15 Allstate is different from Van Tassel against Horace Mann,
16 which is the principal case in which they in Minnesota said, we
17 apply stacking. It's different because there is a choice of law
18 clause, because the anti-stacking clauses are unambiguous in
19 contrast to the other case -- here they're the same. If it had
20 made all those points, I think that is an appropriate way for
21 the Minnesota Supreme Court to do. If it had still said, no,
22 because what we're concerned with is protection, is the role of
23 the accident compensation system. And we have our widow, we
24 have an estate that we are concerned with. And if it had said
25 that, that doesn't strike me as arbitrary action of the kind

1 that this Court ought to interfere with. This Court is not, I
2 think, a court of errors and appeals on the choice of law theo-
3 ries. Contrary to what Mr. Nolan said, we're not asking you
4 here to say, we agree with Minnesota Supreme Court's construc-
5 tion of Leflar. We're simply saying it doesn't rise to the
6 dignity of the kind of arbitrary action that this Court sits
7 to exclude.

8 QUESTION: Mr. Attorney General, you have emphasized
9 two factors, primarily: the presence of the will in Minnesota
10 and the fact that the decedent was employed in Minnesota.
11 I think it was Justice White who asked you what the effect would
12 have been if she had, the widow had remained in Wisconsin.
13 My question is whether your case would be substantially weakened
14 or you would have no case at all if decedent had not been em-
15 ployed in Minnesota?

16 MR. LOWENFELD: Well, Justice Powell, I think the --
17 I raised the issue of employment because the Minnesota Supreme
18 Court raised it. If you look at the purposes of the accident
19 compensation system -- and of course, this is a hybrid between
20 tort and contract, as I already suggested -- the more important
21 issue is whether the widow and heiress becomes a public charge
22 or whether there is a fund available to pay for her. So I
23 think the employment though relevant is less critical than the
24 residence of the lady, provided, and I -- just to repeat what
25 I said to Justice Rehnquist, provided there's no suggestion of

1 manipulation or deliberate forum shopping, something like that.

2 QUESTION: What if the results were to be the same in
3 both states? Then what happens to your argument about the
4 widow becoming a public charge?

5 MR. LOWENFELD: You mean, if Minnesota also now says
6 stacking is foolish?

7 QUESTION: No, if the financial result was precisely
8 the same in both states?

9 MR. LOWENFELD: Well, I suppose then there is no con-
10 flict of laws. And in fact, as we suggest in our brief, that
11 may well be the situation, since, interestingly enough, the
12 Wisconsin court in the Nelson case, which said, we don't have
13 stacking here, said, that's because this accident happened be-
14 fore the statute was amended and then the statute was amended
15 and they said, well, we make no finding as to how that would
16 come out. And Minnesota Supreme Court said, it's possible that
17 Wisconsin would come out the same way but we don't have to worry
18 about that; we don't want to hold a hearing on how Wisconsin
19 would judge this, we're just going to apply our own law.

20 Now, let me just briefly, if I may, come back to the
21 question of what line should be drawn. I've already suggested
22 that this Court ought to be reluctant to get into the question
23 of a particular contact or a particular interest, whether it's
24 residence or the place of the accident or the domicile of the --
25 of a particular party, whether it's plaintiff or defendant.

1 MR. CHIEF JUSTICE BURGER: We'll resume there at 1
2 o'clock.

3 MR. LOWENFELD: All right. Thank you.

4 (Recess)

5 MR. CHIEF JUSTICE BURGER: Mr. Lowenfeld, you may
6 continue. You have seven minutes remaining.

7 MR. LOWENFELD: Thank you very much.

8 As I was saying at the lunch break, the position that
9 we take is that this Court does not sit to decide between one
10 theory of conflict of laws and another, whether it's contacts
11 analysis or interests analysis, the first restatement, the
12 second restatement, Professor Leflar, or some other professor;
13 that what it sits to oversee is, and only is, the question of
14 arbitrary action.

15 I'd like, perhaps, in the few minutes I have remain-
16 ing --

17 QUESTION: I'd like to be sure about what you mean,
18 because there's really no Federal constitutional question for
19 us to decide in choice of law cases, unless there's some alleged
20 arbitrary action, denial of due process, and that's all?

21 MR. LOWENFELD: That's entirely my position, Justice
22 Brennan; yes.

23 QUESTION: Does that not, to a degree -- or, I'll put
24 it, does it to a degree put jurisdiction and choice of law in
25 logic-tight compartments?

1 MR. LOWENFELD: Well, that's an interesting way,
2 Mr. Chief Justice, to put that question. Of course, we've had
3 this series of cases now -- four of them in four years -- in
4 which the jurisdiction has been challenged and state court
5 action has been struck down. It's interesting that Justice
6 Brennan in each of those cases said, why is that so if choice of
7 law would be permissible? And the majority has said, no, we are
8 prepared to strike down certain cases of arbitrary reaching out.

9 I think it turns out that some of the cases that
10 you've had in the jurisdiction area -- Rush and Savchuk in par-
11 ticular is a good example; perhaps Kulko as well -- the Court
12 might have come down the other way, but the difficulty, if it
13 had come down -- that is to say, struck them down on choice of
14 law rather than on jurisdictional grounds -- but if you had done
15 that, it would have opened up a very large area of fine-line
16 drawing, weighing this against that, and it would have involved
17 this Court telling the Supreme Court of Oklahoma, Minnesota,
18 California, et cetera, how to decide cases.

19 QUESTION: Of course, by the same token, you could
20 say we told them how to decide them on the basis of jurisdic-
21 tion.

22 MR. LOWENFELD: No, I don't think so, Justice
23 Rehnquist. I think what you told them in those cases is, don't
24 decide this case; it ought to be adjudicated somewhere else, or
25 dismissed -- as in Volkswagen -- dismiss the following parties

1 from the case, and then you can go ahead with other parties.
2 That's exactly the difference. And it seems to me that in terms
3 of a vibrant Federal system, it's easier to draw lines and it's
4 less intrusive into the work of the state judiciary to say, you
5 may not hear this case at all, than to say, you can hear it but
6 you'll only decide it in a certain way. I think that was
7 started with Hanson against Denckla and then kept up in these
8 four cases that you've had in the last four years now.

9 QUESTION: Is it possible that -- I'll put it another
10 way -- which do you think will be advanced by the approach you
11 suggest, hands off, by this Court? Federalism or parochialism?
12 Is it parochialism?

13 MR. LOWENFELD: I would say -- I would say federalism
14 and a certain amount of experimentation. If you think about
15 the difficulty with setting down rules in the choice of law
16 area, it's a little bit like the criminal procedure cases.
17 Since you have no Federal statute, you only, your only criteri-
18 on is a due process criterion if you lay down a certain rule.
19 For example, the issue must vest at the date of impact, or the
20 following are minimum contacts, and so forth. It will turn out
21 that neither the lower Federal courts nor the state courts nor
22 state legislatures nor Congress, no one can make any changes.
23 And that, it seems to me, it would be very unfortunate for the
24 development of federalism. It's no accident, Mr. Chief Justice,
25 that the conflict of laws has really been in the forefront of

1 experimentation in the whole area of accident compensation.
2 That is, we've had, for example, the series of guest statute
3 cases that I'm sure you're familiar with, many in New York, some
4 in California and elsewhere.

5 And the result over time, though the conflict theories
6 have tended to vary with the different professors and the dif-
7 ferent judges, in the end we've had a reduction in guest stat-
8 utes; we've had a reduction in wrongful death limitations; a
9 variety of these kind of quirky state rules have tended to go.
10 In other words, conflict of laws has been an engine of law re-
11 form generally and I think it would be very unfortunate if this
12 Court were to stop that. I think that's what Professor Freund
13 meant in his essay about Chief Justice Stone, which is cited in
14 our brief. It's what Chief Judge Kaufman meant in the Pearson
15 case in which he warned against returning to the "ice age" of
16 conflict of laws.

17 I think altogether a dynamic federalism, Mr. Chief
18 Justice, would be furthered by a statement that the Court will
19 come in only at a certain time, only when there's really arbi-
20 trary action, not by an attempt to draw particular rules of this
21 kind here.

22 QUESTION: But you don't think that we should say that
23 just because a state court has jurisdiction -- obvious jurisdic-
24 tion, no one questions it -- that it may apply its own law?

25 MR. LOWENFELD: I'm not sure whether you should say

1 that or not, Mr. Justice White. I think --

2 QUESTION: Would you find the application of that rule
3 arbitrary in some circumstances, if there's acknowledged juris-
4 diction, everybody agrees there's jurisdiction?

5 MR. LOWENFELD: I would put the statement slightly
6 differently. I would say that if you exercised the kind of
7 vigilance that you've exercised in the last few years on judi-
8 cial jurisdiction, on reaching out by state courts, you will not
9 find the kind of arbitrary action, the kind of parochialism --
10 as the Chief Justice suggested -- that you need to worry about.
11 I'm not quite sure I would put -- but if you did put it the way
12 you've said, I don't think that would be a tragedy. I think
13 it's a slight, subtle difference.

14 QUESTION: Mr. Lowenfeld, would you say that a statute
15 would be unconstitutional that -- say the State of Minnesota
16 passed a statute that said, in all cases tried in Minnesota
17 courts the Minnesota judges shall apply Minnesota law?

18 MR. LOWENFELD: I think I could certainly conceive of
19 situations where, as applied, that such a statute would be
20 unconstitutional. Yes; for example, if in our case Mrs. Hague
21 had remained in Wisconsin or had moved to New York but had hired
22 Minnesota counsel and then were applying that kind of statute,
23 that would seem to me arbitrary action; yes.

24 I think my time is out. Thank you.

25 MR. CHIEF JUSTICE BURGER: Thank you. Mr. Nolan?

1 ORAL ARGUMENT OF MARK M. NOLAN

2 ON BEHALF OF THE PETITIONER -- REBUTTAL

3 MR. NOLAN: If I might respond and rebut quickly and
4 briefly, I would like to answer Justice White's question by
5 pointing out the ludicrousness of it.

6 Allstate could be sued in all 50 states, all 50 states,
7 for the purposes of a declaratory judgment action, an action
8 directly against the insurance company. You could sue Allstate
9 in all 50 states. You would not want any of those 50 states to
10 be able to choose their law. I would say, in answer to your
11 question, no. The courts cannot choose their law.

12 QUESTION: When you say, ludicrousness, you mean
13 the ludicrousness of the result, not the ludicrousness of the
14 question?

15 MR. NOLAN: That is so.

16 QUESTION: But where do you find the word "ludicrous"
17 in the Constitution?

18 MR. NOLAN: Where I find --

19 QUESTION: What's a -- what would Allstate be deprived
20 of if sued in Hawaii on this cause of action by a resident of
21 Minnesota?

22 MR. NOLAN: Allstate would be deprived of due process
23 and in this particular instance Wisconsin would --

24 QUESTION: How? How is that?

25 MR. NOLAN: -- be deprived of full faith and credit.

1 QUESTION: Why would it be deprived of due process?

2 MR. NOLAN: Because there are no contacts --

3 QUESTION: Please tell me if Dick does -- why, what
4 deprivation is that?

5 MR. NOLAN: There are no contacts with the State of
6 Hawaii that gives them any interest over the State of, over
7 Allstate's interest in writing this contract in conformity with
8 Wisconsin's law.

9 QUESTION: Well, would it be all right to be sued
10 there in Hawaii as long as it applied Wisconsin's laws?

11 MR. NOLAN: I think they could. I think somebody
12 might raise a motion of forum non conveniens. But you --

13 QUESTION: Well, suppose it was denied? It would
14 still be --

15 MR. NOLAN: Then I think the result should be that
16 they could hear the case but they should apply Wisconsin's law.

17 QUESTION: Well, what interest has Hawaii got in
18 hearing that case?

19 MR. NOLAN: I don't think they have any interest and I
20 would wonder why they would do it. But they could -- I guess
21 what I'm saying is that you're telling me to assume that the
22 jurisdiction is okay?

23 QUESTION: I am.

24 MR. NOLAN: What should be the choice of law?

25 QUESTION: I am; yes, I am. Yes I am; yes.

1 MR. NOLAN: Okay. I don't think they have any in-
2 terest in it and that's why I think they should choose Wiscon-
3 sin's law.

4 QUESTION: Rather than just dismiss the case?

5 MR. NOLAN: Well, the -- what they really -- you've
6 told me -- I said that I would bring the motion for forum non-
7 conveniens. They should dismiss the case. Then you've said,
8 assume that's denied. Well, assuming it's denied, then they
9 should apply Wisconsin law.

10 Briefly, they also -- my opponent's missed the case
11 of Yates versus John Hancock Insurance. That is a case very
12 much in point with this situation in that that's a life insur-
13 ance policy which was applied for in New York. After the death
14 of the husband the wife moved to Georgia. Georgia applied their
15 law as opposed to New York's law and in that court this case
16 indicated the choice of law was a Full Faith and Credit issue
17 in addition to due process, and additionally indicated that that
18 after-acquired fact of her moving to Georgia was not enough
19 contact with Georgia to give them any interest to apply their
20 law.

21 The same is true of Mrs. Hague moving to Minnesota
22 after this instance. Full Faith and Credit does go to not only
23 acts but to judicial proceedings. What has happened here,
24 there's the judicial proceeding of Wisconsin has said, no
25 stacking; Nelson is the case. No stacking; to give full faith

1 and credit to that, you must apply Wisconsin's law.

2 Additionally, there's been a hint that there's no con-
3 flict at issue, both in the argument and in the brief. There
4 definitely is a conflict of law. The Minnesota court's recog-
5 nized that the Nelson case in Wisconsin said, no stacking.
6 It wasn't raised in argument but it is raised in their brief
7 that an amendment was added to the statute after that decision.
8 That amendment has nothing to do with giving arguments to
9 stacking, as -- without getting off on a tangent, it provides
10 arguments for not allowing a setoff for med. pay and uninsured
11 motorist coverage. As the Minnesota court recognized, that
12 amendment did not change the statute. There is a conflict.

13 The last issue that I should address is, this Court
14 should hear these cases, should make a determination in these
15 cases. Its position should not be hands off. It should not
16 abdicate its role as the protector of the Constitution in
17 letting courts just experiment and go to this better rule of
18 law test without paying attention to the Constitution.

19 QUESTION: Well, if this accident had happened in
20 Wisconsin --

21 MR. NOLAN: It did.

22 QUESTION: -- had happened in Minnesota and --

23 MR. NOLAN: Yes?

24 QUESTION: -- suit was in Wisconsin and the widow had
25 not moved to Minnesota, she sued -- probate in Wisconsin and

1 sued in Wisconsin, would you say that the Wisconsin courts could
2 apply either the Minnesota law or Wisconsin law?

3 MR. NOLAN: I would say that would be a closer case.
4 I think Wisconsin --

5 QUESTION: Is there always one answer to these ques-
6 tions?

7 MR. NOLAN: No, there isn't; that's --

8 QUESTION: I mean, could it -- aren't there some cases
9 in which either -- the law of either state could be applied
10 without violating the Constitution?

11 MR. NOLAN: Yes. And in that -- if that were true
12 then, if you got to that threshold, then better rule of law
13 might be a way of resolving that, that dilemma. But if you
14 don't get to that threshold, if you don't cross the constitu-
15 tional area, you surely don't.

16 QUESTION: Well, in Justice White's hypothetical,
17 would the Full Faith and Credit -- in Justice White's hypotheti-
18 cal, would the Full Faith and Credit Clause be involved?

19 MR. NOLAN: To the extent that -- you're saying --
20 I guess, if it would --

21 QUESTION: As I understand your argument in this case
22 you do rely on the Full Faith and Credit Clause?

23 MR. NOLAN: Yes.

24 QUESTION: And you cited that what the Minnesota
25 Supreme Court did violated that clause --

1 MR. NOLAN: Yes.

2 QUESTION: -- not giving -- in giving weight to --
3 with Nelson. But in the case that Mr. Justice White put to you
4 how would it be covered? What would you have to turn to then?

5 MR. NOLAN: What would you -- you mean, what would
6 you turn to as the --

7 QUESTION: In the Federal Constitution?

8 MR. NOLAN: I guess you would turn to Due Process; the
9 contacts, whether the contacts were such.

10 QUESTION: But these cases do differ.

11 MR. NOLAN: Yes. I think that both Due Process and
12 Full Faith and Credit is involved.

13 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.
14 The case is submitted.

15 (Whereupon, at 1:14 o'clock p.m., the case in the
16 above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-938

Allstate Insurance Company

v

Lavinia Hague, Etc.

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BY: W. J. Wilson

William J. Wilson

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