

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-693

TITLE ASAHI METAL INDUSTRY CO., LTD., Petitioner v. ETC.
SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY, ETC.

PLACE Washington, D. C.

DATE November 5, 1986

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 ASAHI METAL INDUSTRY CO., LTD., :

4 Petitioner :

5 v. : No. 85-693

6 SUPERIOR COURT OF CALIFORNIA, :

7 SOLANO COUNTY, ETC. :

8 - - - - -x

9 Washington, D.C.

10 Wednesday, November 5, 1986

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 1:40 o'clock p.m.

14
15 APPEARANCES:

16 GRAYDON SHAW STARING, ESQ., San Francisco, Cal.;

17 on behalf of Petitioner.

18 RONALD R. HAVEN, ESQ., Sacramento, Cal.;

19 on behalf of Respondent.
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C O N T E N T S

ORAL ARGUMENT OF

PAGE

GRAYDON SHAW STARING, ESQ.,

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on behalf of Petitioner.

RONALD R. HAVEN, ESQ.,

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on behalf of Respondent.

GRAYDON SHAW STARING, ESQ.,

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on behalf of Petitioner - rebuttal

1 P R O C E E D I N G S

2 CHIEF JUSTICE REHNQUIST: Do you pronounce
3 your name "Stare-ing"?

4 MR. STARING: "Starring."

5 CHIEF JUSTICE REHNQUIST: "Starring," okay.
6 They have two dots over the "a" and I wasn't sure just
7 how that figured out.

8 MR. STARING: I'm not sure how they got
9 there.

10 ORAL ARGUMENT OF
11 GRAYDON SHAW STARING, ESQ.

12 ON BEHALF OF PETITIONER

13 MR. STARING: Mr. Chief Justice, may it please
14 the Court:

15 Narrowly viewed, this case arises from a
16 dispute over a supply contract between two foreigners
17 abroad. A different and broader view was taken of the
18 case by the Respondent and by the California Supreme
19 Court, as a case affecting the potential tort and
20 indemnity claims of Californians.

21 Even if this Court were to decide the case
22 upon the narrowest of grounds, we think it could not
23 very well ignore the implications which the case might
24 have for the tort suits of injured parties in America.
25 I therefore do not address the case with the intent to

1 neglect that broader issue, but instead would propose to
2 address it on that issue, rather than the narrower one.

3 Both parties here start with World-Wide
4 Volkswagen. That case, as you well know, is an
5 interstate case rather than a case involving an
6 international relationship or a foreign defendant. I
7 think that members of this Court have not been
8 completely at ease with the emphasis upon the concept
9 and term "sovereignty" in the analysis of the problem in
10 World-Wide Volkswagen.

11 That analysis can probably be validly taken as
12 a reverse view of the individual rights which are
13 intended to be preserved by the due process clause, and
14 indeed I have seen that view taken.

15 Here in this case, however, by contrast with
16 World-Wide Volkswagen, we have an attempted projection
17 of state power internationally. We have, I think,
18 therefore an authentic case for analysis in the
19 traditional terms of sovereignty, as we are dealing not
20 only with an express clause of the Constitution, albeit
21 a terse one, but with the problem of considering
22 standards of international law and comity.

23 Perhaps the conclusion that we urge here could
24 be reached on the basis of such international standards
25 and without reference to the due process clause. We

1 don't urge that. We see no need to, and we don't think
2 it's desirable.

3 Questions which arise domestically and
4 questions of personal jurisdiction which arise
5 internationally should, if possible, be resolved with
6 similar analyses. These analyses in our view would be
7 inconsistent only in respect of the element of this
8 Court's power to control reception and enforcement
9 within the United States and this Court's function of
10 distributing to some extent the judicial business within
11 an interstate federal system.

12 And of course, therefore, in the international
13 case it would be necessary, we think, to take account of
14 the lack of that power and the lack of that function in
15 the international sphere, and in that sphere to give
16 some heed to the views of others abroad in connection
17 with our international powers.

18 QUESTION: Mr. Staring, straighten out a
19 couple of details for me. Are there any other
20 cross-claims filed against you in this case by
21 California citizens?

22 MR. STARING: There are none in this case, but
23 there are other cross-claims in other cases not before
24 the Court, not this identical case. They exist.

25 QUESTION: And it has nothing to do with this

1 accident?

2 MR. STARING: Yes, they arise from this
3 accident.

4 QUESTION: I see.

5 MR. STARING: Yes.

6 QUESTION: Is there a choice of law clause in
7 the contracts between your client and Cheng Shin?

8 MR. STARING: We have no knowledge of that.

9 QUESTION: Thank you.

10 MR. STARING: The record shows nothing as to
11 it.

12 We are not suggesting, by the way, that this
13 Court in this case should announce a rule of
14 international law or a standard of international
15 conduct. That would be uncalled for. It is, I suppose,
16 a proposal of that nature which the Respondent suggests
17 in urging the affirmance below at one point in its
18 brief.

19 What we do say is that international
20 considerations call for a heightened scrutiny of the
21 necessary contacts, ties, or relations to establish
22 personal jurisdiction, and we do urge that a case of
23 this character is not one in which the scope of the
24 jurisdiction of our state courts over manufacturers
25 abroad should be extended.

1 We would not even urge that there should be
2 such an extension if our client were a domestic
3 manufacturer of components, but that is not the
4 situation here. It is a foreign, an alien manufacturer,
5 and we think this is not -- such a case is not a case
6 for an extension such as the Supreme Court of California
7 has given to World-Wide Volkswagen.

8 QUESTION: Would you be making the same
9 argument if the original Plaintiff had not settled?

10 MR. STARING: Yes. Yes, I don't see why not.
11 May I add, Justice Blackmun, that the original
12 Plaintiff did not sue my client Asahi here.

13 QUESTION: Yes, that's correct.

14 MR. STARING: But had it done so, we would be
15 making the same argument. As I said at the outset, I
16 did not wish to take refuge solely in the narrow view,
17 in the narrow issue in this case raised by the fact that
18 it pertains to a contract between two parties in the Far
19 East.

20 I do not waive that issue, but I think the
21 broader issue has to be seen by the Court.

22 The focus of attention under World-Wide
23 Volkswagen in this case has been on the stream of
24 commerce doctrine. We don't know where the headwaters
25 of that stream are and we have no map to show us. But

1 we assume for our purposes here that Asahi delivered
2 products into that stream or some tributary of it.

3 We don't accept, however, the Respondent's
4 further suggestion, that a component maker in the
5 position of Asahi here is somehow or other especially
6 responsible for that stream, as though it were the
7 original spring.

8 That is an unrealistic view, we suggest, both
9 commercially and legally. This Court in referring to
10 the significance of delivering products into the stream
11 of commerce in World-Wide Volkswagen added, however, the
12 important qualification that they must be so delivered
13 with the expectation that they would be sold to
14 consumers in the forum state. The Court went on to say
15 that foreseeability or mere foreseeability of their
16 reaching the forum state was not enough.

17 The Supreme Court of California chose to deal
18 with the case not in terms of foreseeability, the term
19 "foreseeability" which this Court had used, but rather
20 in terms of awareness, and there has been some argument
21 in the briefs about the difference between the two. I
22 would not bandy words here about foreseeability and
23 awareness, but would suggest instead that at this point
24 we look at the evidence, the very brief, the very simple
25 evidence in the record, which was found sufficient below

1 to sustain jurisdiction in California, because it
2 illustrates a problem which is inherent in cases which
3 will arise under the standard which the California
4 Supreme Court has adopted.

5 QUESTION: Mr. Staring, do you concede that it
6 was foreseeable that the valves would reach California?

7 MR. STARING: No, I do not concede that it was
8 foreseeable. The evidence on it --

9 QUESTION: You argue that foreseeability alone
10 is not enough, anyway.

11 MR. STARING: Yes, we argue that
12 foreseeability alone is not enough.

13 And let me retract that. I think that we're
14 prepared to argue this case and present this case to the
15 Court in terms of foreseeability, mere foreseeability.

16 QUESTION: By that what do you mean, that that
17 should be the test?

18 MR. STARING: No, but that that should not be
19 the test and that that is the very most, the very most
20 which could be shown by the record here.

21 QUESTION: You may as well give that away,
22 because the California court found foreseeability. You
23 don't expect us to reverse that on this record, do you?

24 MR. STARING: I don't ask this Court to review
25 the facts as found by the California court.

1 QUESTION: And they found foreseeability.

2 MR. STARING: On whatever record.

3 QUESTION: Right.

4 MR. STARING: I don't know whether they found
5 it. They found something that I think was at least
6 that. And as I say, I don't want to bandy words about
7 what awareness is and foreseeability. They went pretty
8 far with the thin record they had.

9 I want to go into that record, though, for a
10 special reason.

11 QUESTION: Do you think there has to be a
12 different test for a component manufacturer than the
13 primary manufacturer?

14 MR. STARING: I do not think that there's any
15 different principle which applies. I think the
16 principles which this Court has laid down apply to
17 both.

18 We think, however, that the situation of
19 component manufacturers is likely in most instances to
20 be very different, and that it is possible therefore to
21 frame a test with respect to component manufacturers
22 which is consistent with the same principles applying to
23 everyone else, and we have tried to do that in our
24 brief.

25 The record here was very short so far as

1 knowledge or awareness or foreseeability was concerned.
2 There is an affidavit which shows some conversations,
3 unspecified. Some time in those conversations,
4 information was given to Asahi that Cheng Shin sold
5 tubes worldwide and that some unspecified number or type
6 were sold in the United States. That's it.

7 Now, Asahi's knowledge of those meager facts
8 is absolutely undated in reference to contract,
9 production, delivery, or even the accident in this case,
10 which occurred in 1978, the first year of six years in
11 which the Plaintiff Cheng Shin collected statistics to
12 use against Asahi in this case.

13 Now, that shows, we think, what kind of murk,
14 what kind of fog, we are likely to get into in component
15 cases under the standard which has been followed by the
16 California Supreme Court. We could, I suppose, have had
17 a battle of affidavits, which could have been two or
18 three or more affidavits. We have one affidavit full of
19 fog. We could have had several foggy affidavits.

20 And if you think about the distinction between
21 the component manufacturer's situation and the situation
22 of the ultimate manufacturer and exporter, you will see
23 how likely this area is to be foggy all the time. In
24 the case of the ultimate manufacturer --

25 QUESTION: Where do you want to end the fog?

1 Where would you draw the line? Suppose I am the
2 ultimate manufacturer, but not the exporter? That is to
3 say, I manufacture washing machines, the totality of
4 them, including all of the components, and I sell the
5 washing machine to -- let's say in Japan, to a company
6 which I know exports them, and I know they export them
7 to the United States, and indeed I know they export them
8 to California.

9 MR. STARING: I wouldn't draw the distinction
10 just on the basis of whether it was an ultimate
11 manufacturer or an exporter. I think the critical thing
12 is that, whichever one it is, it seek to serve the
13 California market, as was said in World-Wide Volkswagen,
14 that there be some act, some act by which it positively
15 seeks to serve that market and direct its products into
16 that market.

17 And so it will depend upon the facts in every
18 case. But I would say that if a manufacturer had
19 nothing more to go on than a bit of conversation, of
20 undocumented conversation, that an exporter sent
21 products to the United States as well as other places,
22 that is not the kind of activity of direction toward the
23 California market which we think this Court intended in
24 World-Wide Volkswagen and which is consistent at least
25 with other decisions of the Court.

1 QUESTION: If I understand you, I have to be
2 the one who sends the thing into the market. Is that
3 where you're drawing the line? I have to be the one
4 that sends it?

5 It's not enough that I know I am delivering it
6 to someone who will send it there? The sending of it
7 there has to be my doing?

8 MR. STARING: No, Justice Scalia, I do not
9 contend that. I do say, though, that you must at least
10 do some act by which you encourage the sending of it
11 there, by which you seek to serve that market. You must
12 do something more than respond to an order which is
13 unspecific as to where the product is going to go.

14 QUESTION: Well, now you're getting foggy.
15 See, I suddenly don't see the line any more. Why isn't
16 it encouraging the sending it there to deliver the
17 equipment knowing that once I deliver it it's going to
18 be sent there?

19 If we had a law of accessory applicable to
20 this, I'd certainly be an accessory to the sending of it
21 there, wouldn't I?

22 MR. STARING: I must beg off any response on
23 criminal law. But I would have thought that to be an
24 accessory under the criminal law it would be necessary
25 to have more knowledge, more scienter than that. I

1 don't know.

2 QUESTION: Well, does the record show what
3 percentage of Cheng Shin's -- is that the name, Cheng
4 Shin?

5 MR. STARING: Cheng Shin.

6 QUESTION: Cheng Shin's valves are purchased
7 from your client?

8 MR. STARING: It does not show it.

9 QUESTION: So that it does show that Cheng
10 Shin bought from other suppliers?

11 MR. STARING: Yes.

12 QUESTION: So your client just supplied part
13 of the demand --

14 MR. STARING: That's right.

15 QUESTION: -- for that particular company?

16 MR. STARING: That's right.

17 QUESTION: And so some of his valves might
18 have gone to California and perhaps none of them did?

19 MR. STARING: Exactly. That is exactly the
20 situation. We don't know from the record what portion
21 of valves were bought from us and what portion were
22 bought from --

23 QUESTION: We do know there were quite a few,
24 don't we? We do know it was something like a quarter of
25 a million that were sold in California?

1 MR. STARING: We don't know that from this
2 record, no.

3 QUESTION: Not their valves.

4 MR. STARING: Beg your pardon?

5 QUESTION: There were that many tires sold.

6 MR. STARING: Tires, I think.

7 QUESTION: And didn't they all have your
8 client's valves?

9 MR. STARING: No, we don't know the number of
10 valves.

11 QUESTION: Wouldn't your client know that?

12 MR. STARING: No, because the component
13 manufacturer puts his valves in inventory, he ships them
14 to the ultimate manufacturer, they go through his
15 inventory. At some time or other, he takes them out and
16 sends them on.

17 QUESTION: He must have some idea what's going
18 to happen to them, though. I mean, you have salesmen
19 who talk to your customers, I suppose, and they find out
20 what their needs are and what kind of products they
21 need, don't they?

22 MR. STARING: I think that the realistic
23 situation in an industrial situation of this sort is a
24 little different, and that there are more likely to be
25 supply contracts and shipments from one country to

1 another under supply contracts, rather than door to door
2 salesmen.

3 QUESTION: Well, doesn't the record show an
4 investigation and finding of your valves in California?

5 MR. STARING: The record contains affidavits
6 in which a lawyer in Sacramento has said that he
7 identified quite a number of our valves on tires in
8 California.

9 QUESTION: Is that improper material in the
10 record?

11 MR. STARING: Yes, we think so. We think this
12 is really to be disregarded. And we don't think that,
13 incidentally, that the lower court or that the
14 California Supreme Court indicated any great reliance
15 upon that.

16 QUESTION: I'm not sure about great reliance,
17 but does the record show the presence of your valves in
18 the state of California?

19 MR. STARING: The record shows that valves
20 identified as ours have been found in the state of
21 California in the year 1983. I believe that's the year
22 in which they're said to have been found.

23 QUESTION: That's my impression.

24 MR. STARING: That's right, 1983. This
25 accident happened in 1978, and we are talking, I hope,

1 about contemporaneous knowledge when we seek to impose
2 jurisdiction upon someone for --

3 QUESTION: Well, if you find the registered
4 agent today you could serve him today, couldn't you? I
5 mean, for personal jurisdiction isn't it your presence
6 at the time you're sued?

7 MR. STARING: Well, that is not, however, at
8 the heart of the stream of commerce doctrine as we
9 understand it. We don't deal here with any question of
10 general jurisdiction over Asahi in California, and I
11 don't think there's any contention that anyone even
12 would dare to contend that the presence of some Asahi
13 valves in California would constitute Asahi's presence
14 there.

15 So it's necessary here for Cheng Shin to
16 prevail, if it does at all, on the stream of commerce
17 doctrine, and that involves --

18 QUESTION: Well, your client at least knew
19 that Cheng Shin's tires were being sold in the United
20 States?

21 MR. STARING: The record shows that we were
22 told that at some time.

23 QUESTION: Yes, and the only thing -- and you
24 knew that there's a chance then that some of your valves
25 would get to California. But there was a chance --

1 there also was a chance, I suppose, that none of them
2 would, because you didn't supply all of the valves for
3 Cheng Shin?

4 MR. STARING: It must be taken -- yes, it must
5 be taken that we had a mere -- an awareness of a mere
6 likelihood, and that is all, a mere likelihood at most
7 that some valve of ours might find its way to
8 California. And the statistics gathered afterward show
9 that on the probability basis it was unlikely, rather
10 than likely. We have no more than that.

11 QUESTION: Unlikely? I thought the evidence
12 was there were 500,000 of your valves that were sold by
13 Asahi to Cheng Shin in one year. And you think it's
14 unlikely that any of those went to the United States
15 when you know they're doing business in the United
16 States?

17 MR. STARING: Well, the evidence of that --

18 QUESTION: Wasn't there a sampling of one
19 county and about half of the valves there came from your
20 client?

21 MR. STARING: There was an affidavit showing,
22 as I said, that in 1983 --

23 QUESTION: I understand.

24 MR. STARING: -- there were a number of valves
25 found which were identified as Asahi's, tentatively by

1 the way.

2 I would like to point out, because this is,
3 again, one of the vices inherent in this sort of thing,
4 that it is still disputed whether the valve in this case
5 was ever made by Asahi. Asahi has now inspected the
6 valve and says, no, it's not ours.

7 So we have yet to get, presumably, to some
8 point in a trial where it may finally be established
9 whether the component was or wasn't made by the
10 component maker. And then perhaps if the answer is no
11 we can get out on a lack of jurisdiction. I don't
12 know.

13 QUESTION: Well, I don't see where you'd get
14 out on a lack of jurisdiction. I mean, supposing I sued
15 the Ford Motor Company in California and I said, this
16 car that you made for me is really loused up, and their
17 answer is, well, it's not a Ford. Well, it may turn out
18 not to be a Ford, but that doesn't mean the California
19 courts didn't have jurisdiction over Ford. It means I
20 lose the case on the merits.

21 MR. STARING: I agree with you, Chief Justice
22 Rehnquist. And this really heightens the injustice of
23 it, that jurisdiction should be established on such a
24 thin premise.

25 QUESTION: Well, don't you have a right to

1 test -- supposing you think this affidavit is foggy or
2 you think it doesn't say as much as you think it ought
3 to. You have a right to take that person's deposition,
4 don't you?

5 MR. STARING: Yes, we do, Your Honor.

6 QUESTION: And did you choose to avail
7 yourself in this case?

8 MR. STARING: And we did not do it. We did
9 not do it, and I repeat that I think what the record
10 here shows is the inherent foggiess of this kind of
11 case. We would have gotten simply more vague and
12 speculative indications.

13 QUESTION: But Mr. Staring, isn't the
14 foggiess partly due to the fact that the affidavit of
15 Asahi's president is perhaps not as detailed as it might
16 have been? Couldn't he have spelled out in detail just
17 how much knowledge they had of the ultimate destination
18 of these valves?

19 And didn't do that. He just said he knew he
20 sent some to Taiwan, and he doesn't say anything about
21 what he knew was going to happen later. Isn't that
22 right, or maybe I'm misstating the affidavit?

23 MR. STARING: No, I think, Justice Stevens,
24 that you're correct. But I think you have to look at
25 the limitations upon one executive in an affidavit

1 which, if it's to serve any purpose, has to be
2 inherently negative.

3 Someone comes in and says: Over the lunch
4 table, I told these people once this. And what do we
5 do? We come back and say, I never heard it, I don't
6 remember it, I don't remember this incidental fact? If
7 the -- when we turn by contrast to the case of the
8 primary manufacturer and shipper and to cases where
9 jurisdiction has been found in the past, we find
10 objective -- we're going to find objective acts,
11 objective documented transactions.

12 We're not going to find this kind of foggy
13 situation.

14 QUESTION: Well, let me ask you this
15 question. As a legal matter, supposing your opponent
16 took the president's deposition and said: Mr.
17 President, what do you know about the distribution of
18 your products in the United States? And he said: Well,
19 we don't ship anything directly to the United States; we
20 send everything to Taiwan; we do understand that they
21 send about 100,000 or 200,000 or a million dollars worth
22 of our product into California. That's purely at their
23 decision, but we do know that happens.

24 Would there be jurisdiction or not?

25 MR. STARING: I think there would not, Justice

1 Stevens.

2 QUESTION: So there doesn't have to be
3 fogginess. You have a real cleancut position if you
4 want to make it. You're not arguing that.

5 MR. STARING: If you have that situation,
6 yes. But I don't think there would be jurisdiction, and
7 I don't think --

8 QUESTION: So that would be the same if your
9 client knew that they supplied 100 percent of the
10 requirements of the tire manufacturer and they knew that
11 every tire that that manufacturer sent into California
12 had your valve in it? You would say no jurisdiction?

13 That's the same question as Justice Stevens
14 asked.

15 MR. STARING: If I may repeat it to be sure I
16 understand it, this is that we have knowledge we supply
17 all the valves to Cheng Shin --

18 QUESTION: Yes.

19 MR. STARING: -- and we have knowledge that
20 they ship their tires with our valves into California.

21 QUESTION: And that every tire that they ship
22 to California has your valve in it.

23 MR. STARING: All right. I will say that in
24 that case we have certainly foreseeability and we have
25 more than mere foreseeability.

1 QUESTION: Well, that's the same question,
2 though, that Justice Stevens asked you.

3 MR. STARING: But there is another -- I do not
4 concede there is jurisdiction because we have to look at
5 other possibilities. Suppose that all we do is to
6 supply valves which are in accordance with the
7 specifications which are given us.

8 It is not realistic, it is not reasonable, it
9 is not consistent with International Shoe, it is not
10 fair play and substantial justice, to require everyone
11 who supplies a part abroad in response to an order or
12 specifications to make inquiries and to attach the
13 ultimate legal and jurisdictional significance to the
14 possibilities of where those parts may go.

15 QUESTION: Well, maybe that's a defense on the
16 merits, that you just did exactly perform your
17 contract. But supposing you knew they filled the
18 specifications, you also knew that they were going to
19 explode as soon as they were put in motion on a
20 motorcycle, or there were fireworks or something. Would
21 you still say no jurisdiction at all?

22 MR. STARING: The difficulty as a practical
23 matter with that, Justice Stevens, is that you don't
24 know what the ultimate manufacturer is going to do or
25 how he's going to do it, what products he's going to put

1 it into and what products he's going to say it should be
2 used on, a bicycle or a high speed motorcycle. You are
3 very far out of control of all of those things.

4 If I have a minute, I should like to say that
5 I submit that this situation of Asahi does not conform
6 to that fair play and substantial justice which this
7 Court has said is the principal guideline in cases of
8 this sort.

9 Thank you.

10 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
11 Staring.

12 We'll hear now from you, Mr. Haven.

13 ORAL ARGUMENT OF
14 RONALD R. HAVEN, ESQ.,
15 ON BEHALF OF RESPONDENT

16 MR. HAVEN: Mr. Justice Rehnquist, members of
17 the Court:

18 I'd like to point out first of all, getting
19 right into the factual background of this case, that the
20 record is totally devoid of there being any contract
21 whatsoever between the parties. There's no indication
22 of anything more than the fact of a sale, the terms of
23 which have not been made a part of this record.

24 Let me point out that when the motion to quash
25 was initially heard back in 1983, the last declaration

1 to come in in support of the motion to quash was from
2 Mr. Matsoko in support of the motion. He is with
3 Asahi.

4 There was never any mention made of any
5 contract in the course of his affidavit, nor in his
6 affidavit were there any denials of any kind that Asahi
7 was aware of the fact that Cheng Shin and other
8 manufacturers distributed in the United States and in
9 California. He had ample opportunity to make that
10 denial if he chose to do so, and it was never done.

11 Therefore, up until the point of the reply
12 brief in this case it has always been taken by the court
13 as a given, if you will, that Asahi was well aware of
14 the distribution system of Cheng Shin, which included
15 the United States and California.

16 It was also taken by the court as a given that
17 Asahi was fully aware of the fact that the distribution
18 system of Honda, Bridgestone, Yokahama, IFC, and others
19 included the United States and California. It is also a
20 matter of common knowledge. It would be commercially
21 unreasonable to accept the proposition that Asahi is
22 selling one and a quarter million valves to Cheng Shin
23 over the course of a five year period, 150,000 in '78,
24 500,000 in '79, 500,000 in 1980 --

25 QUESTION: How many tires did they make?

1 MR. HAVEN: How many tires did Cheng Shin
2 make? I don't have that information. I don't know what
3 percentage of Asahi's valves went onto Cheng Shin's
4 tires.

5 QUESTION: Well, it might have been only half
6 of one percent.

7 MR. HAVEN: It might have been a half of one
8 percent, but that's still a lot of valves.

9 QUESTION: It might be a lot of valves, but it
10 certainly reduces the chance that any of those valves
11 got to the United States, especially when only 20
12 percent of the business of Cheng Shin came from
13 California.

14 MR. HAVEN: 20 percent of Cheng Shin's
15 business in the United States comes to California.

16 QUESTION: Well, how does anybody know that
17 any of --

18 MR. HAVEN: Nobody could say absolutely that
19 they knew that one of their valves would in fact --

20 QUESTION: The odds are even against it.

21 MR. HAVEN: I beg your pardon?

22 QUESTION: The odds are against it, just on
23 the figures.

24 MR. HAVEN: The percentage odds are against
25 it. However, we found that a lot of them are here, or a

1 lot of them are in California, anyway.

2 QUESTION: Maybe ten.

3 MR. HAVEN: No, there's a lot more than that,
4 something like 267.

5 QUESTION: Nevertheless, in terms of whether
6 Asahi should have anticipated that its products were
7 regularly going to arrive in California, that's a
8 different question.

9 MR. HAVEN: If Asahi knows that Cheng Shin and
10 other worldwide distributors of tire tubes are
11 distributing in the United States and specifically in
12 California, and Asahi continues year after year after
13 year to sell --

14 QUESTION: To sell.

15 MR. HAVEN: -- they take advantage of a
16 systematic method of distribution that they know covers
17 the United States and California, and I think that rises
18 to the level of an expectation.

19 QUESTION: Does Cheng Sing, is it?

20 MR. HAVEN: Cheng Shin, I believe.

21 QUESTION: Cheng Shin, sell its tires in the
22 United States to motorcycle manufacturers, or does it
23 put them directly on the tire market?

24 MR. HAVEN: To the best of my knowledge, they
25 sell replacement tubes. I know that they also sell some

1 bicycle tubes that come on Schwinn bicycles.

2 QUESTION: These are tubes that go inside of
3 tires?

4 MR. HAVEN: Right. We're talking about the
5 tube. We must remember that the valve is really the
6 only mechanical part of the tube. It's a very
7 significant part. The rest of the tube is nothing other
8 than an air-filled rubber donut. The one mechanical
9 part is the valve that goes on it.

10 And the valve stem itself is supplied to Cheng
11 Shin already attached to an oval rubber base, and it's
12 that rubber base that is melded into the tube itself.
13 And in this case, the question of fact at the time of
14 trial is going to be whether there's a defect solely
15 within the valve unit itself.

16 QUESTION: Well, who does Cheng Shin -- does
17 it sell to tire manufacturers?

18 MR. HAVEN: Cheng Shin does sell to some tire
19 manufacturers, yes. It also sells replacement parts
20 that are stocked directly in distributors' warehouses,
21 such as the Hon Cycle Center in Sacramento County, which
22 was the subject of one of our inspections.

23 QUESTION: So it's valve to tube to tire to
24 motorcycle?

25 MR. HAVEN: Well, the tube goes inside the

1 tire. The tube is not -- the tube and the tire are not
2 sold as one unit.

3 QUESTION: Yes, but the tube is manufactured
4 separately from the tire.

5 MR. HAVEN: That's true, that's true. And it
6 is placed on the rim of a motorcycle, and then there is
7 a tire placed on top of the tube. And the tube pokes in
8 through the rim and that's how you put air in it, just
9 like on your bicycle.

10 QUESTION: Now, how is this foreseeability or
11 whatever you want to call it, awareness of the
12 possibility, any different in kind from the awareness
13 that the seller, that an automobile dealer has when he
14 sells automobiles in New Jersey that they are very
15 likely to be driven in Oklahoma?

16 MR. HAVEN: Substantial difference. I think
17 your dealer in New Jersey seeks to serve a certain
18 marketplace. He's at the opposite end of the stream of
19 commerce, if you will, from the component part
20 manufacturer or the primary manufacturer.

21 The primary manufacturer relies, depends on
22 for its existence service of a much wider market. It
23 doesn't seek to serve just New Jersey in most case.
24 We're talking about somebody at the other end of the
25 spectrum, somebody who has to serve a much broader

1 marketplace in order to sell a lot of the product.

2 QUESTION: The equivalent of the person
3 serving the marketplace is the person who buys the
4 Volkswagen in New Jersey, and I know I'm selling these
5 cars to people who travel and I know that they're going
6 to travel, among other places, to Oklahoma. Yet we've
7 held that Oklahoma can't base its jurisdiction over the
8 New Jersey company simply on the ground that somebody
9 who bought a Volkswagen in New Jersey travels in
10 Oklahoma with it.

11 MR. HAVEN: Well, I suppose you can say that
12 it's foreseeable that anybody who has any kind of a
13 vehicle could end up in any state of the Union and
14 perhaps Canada, Mexico, or someplace else. But the
15 point is that your New Jersey dealership did not seek to
16 serve the Oklahoma marketplace, unless you find that
17 there's some other element.

18 QUESTION: So you think Volkswagen should have
19 come out the same even if the seller of the vehicle had
20 said, oh, you want a new car, where are you going? I'm
21 going to Oklahoma. Have a good trip.

22 MR. HAVEN: Well, if he's doing something to
23 take advantage of the Oklahoma customers and getting
24 them to come to him --

25 QUESTION: No, no. This is just a New Jersey

1 customer of his that says he's going to go visit his
2 daughter in Oklahoma. But that nevertheless, it still
3 leaves a New Jersey fellow who is not seeking to serve
4 the Oklahoma market.

5 MR. HAVEN: I don't think that you can say
6 that the New Jersey automobile dealer sought to serve
7 the Oklahoma marketplace because an Oklahoman by chance,
8 some fortuity, walks into his dealership.

9 QUESTION: Or some New Jersey person buys the
10 car and says, I'm going to Oklahoma.

11 MR. HAVEN: It's still a mere fortuity. He's
12 not -- the dealer is not seeking to serve that
13 marketplace.

14 QUESTION: Well, nor was Asahi here. Asahi
15 couldn't have cared less where these valves went. It
16 happened to know that it was very likely they were going
17 to go to California, but they couldn't care less where
18 they went once they unloaded them and got the money for
19 them.

20 They weren't seeking to serve California any
21 more than the Volkswagen dealer could have cared less
22 where the person was driving his Volkswagen. He knew he
23 was going to probably go to Oklahoma. In the
24 hypothetical that Justice White just gave you, the
25 fellow says: I am going to go to Oklahoma. The dealer

1 says: Well, good luck.

2 You're right, he doesn't care whether he goes
3 to Oklahoma or not. So he's not trying to serve the
4 Oklahoma market.

5 MR. HAVEN: That's right.

6 QUESTION: And it's the same here.

7 MR. HAVEN: And the dealership is not
8 systematically again and again seeking to serve the
9 Oklahoma marketplace in your analysis.

10 QUESTION: Asahi was not seeking to serve
11 California, either. It was just selling valves. It
12 couldn't care less where the valves went.

13 MR. HAVEN: That's right, they couldn't care
14 less. They just happened to sell valves to a whole
15 bunch of manufacturers of tire tubes that they knew
16 serviced this marketplace.

17 QUESTION: Just the way the Volkswagen dealer
18 knew that these people were going to be driving the car
19 in Oklahoma.

20 MR. HAVEN: No, no. The New Jersey dealer in
21 your hypothetical sells one automobile to somebody who
22 happens to be going to Oklahoma. In this hypothetical
23 or in this case, Asahi sells over a million valves to
24 just one worldwide producer of tire tubes, knowing that
25 its product is going to come to California, and it sells

1 -- in ten different years, it sells valves to Cheng
2 Shin.

3 It is, as a matter of a distribution system it
4 is indirectly benefiting from what's going on in
5 California. Now, you're never going to get a case --

6 QUESTION: Even in VW, some of us were in
7 dissent.

8 MR. HAVEN: I beg your pardon?

9 QUESTION: I say even in VW, some of us were
10 in dissent.

11 MR. HAVEN: That's very true. But I think VW
12 is a case that is distinguishable based on the fact that
13 we're at a different end of the marketing spectrum. The
14 two entities, the local dealership and the component
15 part manufacturer, have to serve, seek to serve
16 different marketplaces as a matter of the way business
17 works.

18 You're never going to get a component part
19 manufacturer case where the component part manufacturer
20 has a direct sales relationship with the consumer,
21 because the component part manufacturer makes nothing
22 other than the component part that has to be put into
23 something else before it can be utilized. Therefore,
24 we're in a position where the component part
25 manufacturer can be insulated by the nature of his

1 business unless he's responsible in those cases where
2 there's a systematic advantage being taken of a
3 marketplace by that component part manufacturer.

4 QUESTION: He's not insulated. He's just not
5 able to be sued everywhere in the world where his
6 component parts go. He's liable. He can be sued where
7 he can be found.

8 MR. HAVEN: He could be sued in Japan.

9 QUESTION: We're not talking about not being
10 able to obtain redress against the person who makes a
11 defective valve. It's just a question of where you can
12 obtain it, whether you can obtain it wherever the valve
13 happens to turn up or whether you have to go to some
14 place where he is located to sue.

15 MR. HAVEN: Wherever the valve happens to turn
16 up, that's California.

17 QUESTION: That's what you're saying, wherever
18 the valve turns up.

19 MR. HAVEN: Not wherever it turns up. I'm not
20 suggesting that. I'm suggesting much more. I'm
21 suggesting much more activity being required of the
22 component part manufacturer.

23 I am suggesting that the mere fortuity that
24 one -- a valve could end up on your car from New
25 Jersey. Let's say that's an Asahi valve and it happens

1 to roll into Oklahoma or California. That's a
2 fortuity.

3 But where you have a manufacturer of a
4 component part who's never going to have direct contact
5 with the forum because he's only going to sell to other
6 manufacturers, when that component part regularly and
7 systematically, because of the known distribution system
8 of the primary manufacturer, ends up in California or
9 some other state, that's a different ballgame than the
10 one isolated instance.

11 I would submit under the one isolated instance
12 jurisdiction probably is not appropriate. That would be
13 consistent with Volkswagen.

14 QUESTION: Mr. Haven, you're going to get to
15 the second prong of the argument, aren't you, having to
16 do with fair play?

17 MR. HAVEN: Yes.

18 QUESTION: In light of the fact that what's
19 left in this case are two foreign corporations, really
20 foreign corporations, the California residents, the
21 original Plaintiffs, are out?

22 MR. HAVEN: The problem again that I have is
23 the fact that we're dealing with a component part
24 manufacturer who, at least in this case, does all of its
25 business in Japan, which means to me that if in those

1 cases where the injured party perhaps has only one
2 available Defendant, the valve manufacturer, that that
3 Plaintiff may have to go to Japan to seek any redress at
4 all.

5 Now, I admit that's not this case. We're
6 talking indemnity. The Plaintiff has settled out. The
7 Defendants didn't have to settle with the Plaintiff, by
8 the way. We could have drug the Plaintiff through all
9 of this.

10 We settled, we're seeking our indemnity, and I
11 think California has a substantial interest in promoting
12 not only settlements, but also promoting the indemnity
13 which the law in California permits.

14 Now, in footnote one of the Petitioner's brief
15 is a fairly thorough summary of what the nature of the
16 cross-complaint is. You'll see the cross-complaint is
17 an equitable cross-complaint for indemnity or
18 apportionment, as allowed by California law. It is not
19 a contractual indemnity cause of action.

20 The state of California has a substantial
21 interest for many reasons: the accident happened there,
22 the goods were bought in California, California has an
23 interest in making sure safe goods come into the state,
24 as do all the states in this Union. There's a lot of
25 those that are very obvious.

1 But in terms of fair play and substantial
2 justice, I think in balancing the interest of the state
3 versus balancing the interest of Asahi weighs favorably
4 in that of the state, because again I come back to the
5 same notion, that Asahi regularly over the course of ten
6 years and over the course of five years sold well over
7 one and a quarter million valves to Cheng Shin with
8 knowledge of its distribution system, made money off of
9 Californians, subjected Californians to the potential of
10 harm.

11 It's the legal system in California that
12 allows Asahi to do the business that it does there
13 indirectly, and I don't see why Asahi can't come to
14 California and defend its case.

15 QUESTION: But what interest of California
16 remains now that the original Plaintiffs have settled?

17 MR. HAVEN: Well, for one thing, the interest
18 that California has --

19 QUESTION: Possible future injuries?

20 MR. HAVEN: I beg your pardon?

21 QUESTION: Possible future injuries?

22 MR. HAVEN: Well, that's one thing. But
23 another thing is the transaction took place in
24 California, and under California law -- Cheng Shin, by
25 the way, submitted to the jurisdiction of California.

1 Cheng Shin is entitled to the benefits and the burdens
2 of California law.

3 Why can't Cheng Shin, if it's subject to those
4 benefits and burdens, bring its indemnity action there
5 in California, where the main action was?

6 QUESTION: This is Cheng Shin the American
7 subsidiary of the Taiwanese company?

8 MR. HAVEN: No, there's a Cheng Shin U.S.A.
9 which goes out and sells tubes to distributors, and then
10 Cheng Shin of Taiwan sends the tubes in directly to the
11 distributors. So Cheng Shin U.S.A. is nothing more than
12 an order taker. It's a separate California
13 corporation.

14 QUESTION: Yes, but wasn't it a party to the
15 case?

16 MR. HAVEN: It was a party to the case.

17 QUESTION: And I assume --

18 MR. HAVEN: And it's still out there and has a
19 cross-complaint of its own.

20 QUESTION: I assume -- and I don't know what
21 the facts are in this particular case. I assume in the
22 typical situation here your American company probably
23 has an American insurance carrier who probably settled
24 with the Plaintiff and has a subrogation claim against
25 the manufacturer.

1 MR. HAVEN: Well, that's actually an indemnity
2 claim. But actually, Cheng Shin of Taiwan was the one
3 that settled, because Cheng Shin U.S.A. was in an
4 indemnity position vis a vis Cheng Shin of Taiwan.

5 QUESTION: Normally that company -- normally
6 we'd really have an insurance company that would have an
7 interest in this.

8 MR. HAVEN: At least have an option to do so,
9 yes.

10 QUESTION: This particular juncture in this
11 litigation.

12 MR. HAVEN: Now, I would also point out that
13 the retailer of the tire, of the tube more
14 appropriately, had a cross-action against Asahi, which
15 is not before the Court at this time because of some
16 technical problems in terms of service and so forth,
17 time of service and all of that.

18 But it's the best of my knowledge there is
19 another action out there waiting for the determination
20 of this Court, because they didn't want to go through
21 the same appellate process that we were going through.
22 So there is an interest of some other California
23 residents out there.

24 QUESTION: Of course, if you're right that an
25 indemnity claim such as Cheng Shin's is always going to

1 be able to bring in a person further back in the stream,
2 presumably Asahi could make the same argument, if we
3 sustain you here, if it wants to file an indemnity
4 action against the steel manufacturer somewhere in Hong
5 Kong from whom it bought the steel.

6 Somewhere the chain has got to get too thin.

7 MR. HAVEN: Well, and I think you probably hit
8 the nail right on the head right there, because if you
9 have a producer of a natural metal who is pulling it out
10 of the ground and sending it to the valve manufacturer,
11 sending it to Asahi for whatever purpose Asahi wants to
12 make for it or make out of that particular metal, that's
13 a great deal different.

14 QUESTION: Well, how different is it? I mean,
15 this person just sends steel bars from Hong Kong to
16 Japan, and the same conversations took place. Asahi
17 tells him: Yes, we send a lot of our stuff to Cheng
18 Shin and Cheng Shin sends a certain amount to the United
19 States.

20 QUESTION: And do you know that your steel is
21 all over California.

22 MR. HAVEN: Your steel is all over California,
23 and you know that your steel is being made into valve
24 stems.

25 QUESTION: Yes. Well, if you don't know,

1 we're telling you.

2 MR. HAVEN: Okay. Like in the last case,
3 valve stem headed for California.

4 QUESTION: And it cracks.

5 QUESTION: And last week what really failed in
6 an accident was your steel.

7 MR. HAVEN: Well, to the extent that a metal
8 producer is subject to product liability law -- and I'm
9 not sure that steel itself constitutes product
10 liability. But to the extent that there is bubbles in
11 the metal or it's not tempered properly or whatever the
12 process is --

13 QUESTION: So your answer is yes, he should be
14 suable --

15 MR. HAVEN: Yes.

16 QUESTION: -- in California?

17 MR. HAVEN: If he knows it, if he's taking
18 advantage of it on a regular basis, if he's making money
19 off it and he knows and he continues to sell and he
20 doesn't do anything to protect himself from suit in
21 California.

22 I don't see why he shouldn't be answerable in
23 California. He has the same opportunity to get
24 insurance to cover him here, because he has knowledge
25 that --

1 QUESTION: So it is never too far, it is never
2 too remote?

3 MR. HAVEN: Never say never. I wouldn't say
4 that.

5 QUESTION: Just never find out where the
6 person you're selling something to intends to resell
7 it. I mean, that's all he has to do to protect himself,
8 right?

9 MR. HAVEN: Well, if you --

10 QUESTION: Ask not where your valves go.

11 MR. HAVEN: If you stick your head in the
12 sand, you can't be sued where you're making a lot of
13 money from. I'm not sure that that's right, either. I
14 think where as a matter of commercial reality your
15 producer has to know that he is making money from a
16 marketplace on a regular, systematic, continued basis, I
17 don't see why there shouldn't be jurisdiction.

18 QUESTION: But at least the seller of the
19 finished product, he will always know where his products
20 are going.

21 MR. HAVEN: And this is a valve. A valve is a
22 valve. It's got one purpose, is to be a valve, nothing
23 more, nothing less. Now, if he's got a valve that's
24 manufactured for bicycles and is wrongfully put in a
25 motorcycle tube, that's a matter of liability and

1 misuse.

2 However, if that valve -- he's sending valves,
3 which is a finished, complete product that cannot be
4 used for anything other than a valve. We're not talking
5 metal. We're talking a valve is a valve, and it can
6 only go into a tire tube and it's not good for anything
7 else.

8 That's the case we have here, and under these
9 circumstances, where so many valves are in question,
10 where so many valves were actually found in California
11 -- I want to break the train of thought for just a
12 second here.

13 There has been a suggestion made that some
14 lawyer found some valve stems that he identified as
15 Asahi, and the implication obviously is he doesn't know
16 an Asahi valve from some other valve. The declaration
17 from Wally Chen, who is the person from Cheng Shin, is
18 offered as Exhibit A to the Respondent's brief, and in
19 that appendix it specifically stated that Asahi's logo
20 is a capital "A" with a circle around it, and that's
21 what was identified by Mr. Shepard, my partner. As
22 indicated in appendix B and C, that's how he identified
23 those valves.

24 There has never been any denial in any
25 affidavit submitted on the record that the logo is not a

1 capital "A" that is totally encircled. There has never
2 been any kind of an affidavit that the identification
3 was somehow wrong based on the affidavit of Mr.
4 Shepard.

5 So we know that there is 267 of those valves
6 in California in 1983. This accident happened in 1978.
7 What I'm proposing to the Court is that the continued
8 systematic taking advantage of Cheng Shin's system of
9 distribution --

10 QUESTION: What evidence is there of
11 continuous taking advantage of California?

12 MR. HAVEN: I believe the affidavit of Asahi's
13 president said that they had done business with Cheng
14 Shin over a ten year period. And there is also a
15 declaration --

16 QUESTION: What about, what's the evidence
17 that Asahi consciously was taking advantage of the
18 California market over a period of years?

19 MR. HAVEN: Well, they didn't say that.

20 QUESTION: Well, what evidence is there?

21 MR. HAVEN: Well, the evidence is that they,
22 number one, knew or at the very least should have known
23 that Cheng Shin, Honda, and others regularly serve this
24 market. They're an important cog --

25 QUESTION: Isn't know enough?

1 MR. HAVEN: No, I'm saying the declarations
2 say that they knew that Cheng Shin did.

3 QUESTION: I know that.

4 MR. HAVEN: I'm also saying that it would be
5 unrealistic to expect that they didn't.

6 QUESTION: We're back to where we were a while
7 ago, that there is still the missing component of how --
8 what percentage of Cheng Shin's tubes contained Asahi's
9 valves. You don't know that?

10 MR. HAVEN: No, I don't know that. I don't
11 know that.

12 As I was going to point out, however, the
13 sampling that we did in northern California shows that
14 approximately 25 percent of the valves --

15 QUESTION: Well, wasn't there a finding -- was
16 there a finding below that Asahi over a course of years
17 was consciously taking advantage of the California
18 market?

19 MR. HAVEN: There is specific language in the
20 California Supreme Court decision at at least three
21 places --

22 QUESTION: That that's the case, is that it?

23 MR. HAVEN: Yes, that there was an awareness.
24 Asahi was aware of the distribution system's operation
25 and knew that it would benefit economically from the

1 sale in California of products incorporating its
2 components. That's page C11 of the appendix.

3 QUESTION: Yes, if any of them were sold
4 there.

5 QUESTION: That's a very general statement. I
6 mean, obviously they knew they would benefit from the
7 sale of products containing their components anywhere,
8 including California. But that does not say to what
9 extent it thought they were being sold or knew they were
10 being sold in California.

11 MR. HAVEN: I can't tell you what the
12 percentage of tire tubes were that came into
13 California. I just don't have a record of that. What I
14 can --

15 QUESTION: Why wouldn't Cheng Shin have know
16 how many Asahi valves were sold and distributed in
17 California in the year 1978? Why wouldn't they have put
18 an affidavit in the record for the year that is most
19 critical here?

20 MR. HAVEN: The year that's most critical --

21 QUESTION: Or '77, whatever you want.

22 MR. HAVEN: '78, we do know that there were
23 100,000 valves sold to Cheng Shin in that year.

24 QUESTION: But how many of those came to
25 California? Cheng Shin ought to know.

1 MR. HAVEN: Cheng Shin might very well know.
2 That's something that I just didn't get the declaration
3 on.

4 QUESTION: They probably don't know, that's
5 the point.

6 MR. HAVEN: Well, they may very well know.
7 They may know that a certain percentage of their tire
8 tubes contained Cheng Shin --

9 QUESTION: Right. And they know how many
10 tubes went to California. But they don't know how many
11 tubes -- they might not know how many tubes went to
12 California containing Asahi valves.

13 MR. HAVEN: They might not know that, I can't
14 deny that.

15 QUESTION: But they ought to know what the
16 percentage. First of all, they ought to know the
17 percentage, and if you just extrapolate you ought -- but
18 they didn't give us those figures, did they?

19 MR. HAVEN: I beg your pardon? No, I don't
20 have those figures. I just don't have them.

21 QUESTION: So the burden really is on you to
22 sustain jurisdiction. So it's a hole in the record.

23 MR. HAVEN: It's true, it's my burden, it's my
24 burden. I can't offer you that, but I can offer you
25 what was actually there in '83.

1 And what I was going to say a minute ago is
2 that, whether or not this accident or this valve came
3 into California at the beginning of the time of this
4 systematic distribution of the product or at the end of
5 it shouldn't matter.

6 QUESTION: It just seems to me it's such a
7 strange way to get this evidence, to have your partner
8 going out looking through a bunch of valve assemblies
9 five years later.

10 MR. HAVEN: We wanted to establish that they
11 were in fact in California.

12 QUESTION: Yes.

13 MR. HAVEN: The only thing I would ask is that
14 the Court take cognizance of the cases below, all of
15 which are cited in the briefs, which point out the
16 significance of awareness of distribution systems and
17 consider those facts in coming to your decision.

18 In closing, I can only say that it doesn't
19 seem to me to be appropriate, where in fact the
20 component part manufacturer who is in a unique position
21 can insulate itself from having to appear within the
22 forum simply because it will never have contact directly
23 with the forum.

24 A component part manufacturer is in a unique
25 position. It makes all of its sales some place else.

1 It's never going to be selling directly to the
2 consumer. And it's necessary for the Court to devise a
3 way or certain circumstances under which those people
4 can be held accountable for the safety of their products
5 in our state and in all the states.

6 And I would suggest --

7 QUESTION: That can always happen with
8 somebody that doesn't know that it's going to be brought
9 in. I mean, you can have somebody who is negligent as
10 can be in the manufacture of something more dangerous
11 than a valve, let's say an airplane, okay, and he
12 doesn't know that the airplane's going to be used in the
13 United States, and he sells it to someone who then
14 brings it to the United States and it's used here.

15 Now, it's very easy for that to hurt somebody
16 in the United States, and you wouldn't assert that the
17 mere fact that he manufactured the product that was used
18 here is enough to enable him to be sued here, right?

19 MR. HAVEN: No, not at all, not at all. But
20 where that company manufactures those airplanes knowing
21 that they're going to be coming here, it's a different
22 ballgame. That's a different set of circumstances, and
23 if you've got --

24 QUESTION: And it isn't the fact that the
25 injury occurred here alone that makes it an appealing

1 case.

2 MR. HAVEN: I'm sorry?

3 QUESTION: It isn't the fact that the injury
4 from the defective product occurred here, it is not that
5 fact that makes it an appealing case for the assertion
6 of jurisdiction.

7 MR. HAVEN: Not that alone.

8 QUESTION: There has to be some voluntary --

9 MR. HAVEN: There has to be more.

10 QUESTION: -- submission to the jurisdiction.

11 MR. HAVEN: There has to be purposeful
12 availment, are the key words I believe, of the benefits
13 and protections of the laws of the state. And I am
14 submitting that awareness and continued, the continued
15 taking advantage, the continued selling of these valves
16 to Asahi, with the awareness that they were coming into
17 the state, which is I think what the declaration says, I
18 submit that that is purposeful availment within the
19 meaning of due process.

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
21 Haven.

22 Mr. Staring, you have one minute left. Do you
23 wish to use it?

24 REBUTTAL ARGUMENT OF
25 GRAYDON SHAW STARING, ESQ.,

1 ON BEHALF OF PETITIONER

2 MR. STARING: Just a few seconds of it, if I
3 may make one final observation. And that is that the
4 doctrine laid down by the California Supreme Court and
5 urged of course by the Respondent here is one which
6 places Cheng Shin or any manufacturer similarly situated
7 in complete control of the question of jurisdiction over
8 the component maker, according to whether it discloses
9 or doesn't disclose some seemingly incidental fact.

10 And we submit that that is not consistent with
11 the predictability which this Court has held is supposed
12 to be preserved by the due process clause.

13 Thank you very much.

14 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
15 Staring.

16 The case is submitted.

17 (Whereupon, at 2:37 p.m., oral argument in the
18 above-entitled case was submitted.)
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25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#85-693 - ASAHI METAL INDUSTRY CO., LTD., Petitioner V.

SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY, ETC.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

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