
CASE NO. 1140711

IN THE SUPREME COURT OF ALABAMA

FLORIAN HINRICHS,

Appellant,

vs.

GENERAL MOTORS OF CANADA, LTD.,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF GENEVA COUNTY, ALABAMA
CIVIL ACTION NO. CV-08-900009

BRIEF OF AMICUS CURIAE PRODUCT LIABILITY ADVISORY COUNCIL
IN OPPOSITION TO REHEARING

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von Mehren & Trautman, *Jurisdiction to Adjudicate:*
 A Suggested Analysis, 79 Harv. L. Rev. (1966)14

STATEMENT OF THE ISSUE

Whether this Court correctly relied upon *Walden v. Fiore*, 134 S. Ct. 1115 (2014), in holding that GM Canada is not subject to specific personal jurisdiction in this case.

SUMMARY OF ARGUMENT

Plaintiff and his amicus, the Alabama Association for Justice ("AAJ"), urge rehearing based on a demonstrably false premise: that *Walden* is limited to intentional tort cases. Although the Supreme Court has not always clearly stated the constitutional limits on the exercise of specific jurisdiction, *Walden* is a unanimous opinion with broad applicability to *all* specific jurisdiction cases, including those based on a stream-of-commerce theory.

The text of *Walden* makes this clear. The Court articulated the due process principles that govern and limit the exercise of personal jurisdiction, and then emphasized that "[t]hese same principles apply when intentional torts are involved." 134 S. Ct. at 1123. It turns *Walden* on its head to argue, as Plaintiff and AAJ do, that these due process principles -- which the Court said *also* apply in the intentional tort context -- *only* apply in the intentional tort context. In fact, in clarifying the

constitutional limits on personal jurisdiction, the *Walden* Court drew heavily from the Court's seminal stream-of-commerce ruling, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), further underscoring that *Walden* is fully applicable to stream-of-commerce cases, as many lower courts have held. Plaintiff's insistence that *Walden* did not create a new rule of law is entirely beside the point: *Walden* is the logical outgrowth of the Supreme Court's modern specific jurisdiction jurisprudence; it is perfectly consistent with the Supreme Court's prior decisions; and this Court properly looked to *Walden* for guidance in performing the jurisdictional analysis in this case.

Plaintiff cites five cases to support his assertion that "[o]ther courts agree that *Walden* has no application in a stream of commerce case." Pl. Reh'g Br. at 8 & n.17. Three of these cases are unpublished decisions from trial courts in the Virgin Islands. None of the five supports Plaintiff's argument in any event. In fact, some of these cases deem *Walden* to be *applicable* in the stream-of-commerce context; others simply hold that *Walden* does not alter a prior conclusion that jurisdiction was permissible.

At the end of the day, Plaintiff is asking this Court to break new ground by recognizing dispute-blind specific jurisdiction. This would be a creature unknown to our law. The Supreme Court has spoken clearly: whereas *general* jurisdiction is dispute-blind, *specific* jurisdiction requires that the defendant's "suit-related" conduct create the substantial connection with the forum State. *Walden*, 134 S. Ct. at 1121 (emphasis added). Specific jurisdiction, by definition, is *not* dispute-blind. Because Plaintiff's approach is foreclosed by *Walden* -- as well as by the many due process cases that led up to *Walden* -- there is no reason to grant rehearing.

ARGUMENT

This Court correctly held that GM Canada is not subject to personal jurisdiction in this case. There is no basis for general jurisdiction because GM Canada is neither incorporated nor headquartered in Alabama. See *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). And there is no basis for specific jurisdiction because GM Canada's "suit-related conduct" did not "create a substantial connection" with Alabama. *Walden*, 134 S. Ct. at 1121.

In rejecting specific jurisdiction, this Court properly applied *Walden*. The Court noted that in *Walden*, "the Supreme Court emphatically underscored the requirement that the claim against the defendant have a suit-related nexus with the forum state before specific jurisdiction can attach" -- and "left no room for any exceptions." Slip op. at 56-57. This Court then concluded that "there simply is no 'suit-related conduct' that creates a substantial connection between GM Canada and Alabama if the vehicle was not sold in Alabama, even though [Plaintiff] was injured in Alabama." *Id.* at 59-60. That conclusion was correct.

I. *Walden* Is Not Limited To Intentional Tort Cases.

Plaintiff's application for rehearing rests on the erroneous belief that *Walden* is limited to the context of intentional torts. In Plaintiff's view, "*Walden* has no application in a stream of commerce case." Pl. Reh'g Br. at 8. Plaintiff's amicus AAJ echoes this point, arguing that "*Walden* was not decided on the basis of 'stream of commerce'" and "has no application beyond the factual scenario presented in that case." AAJ Br. at 8-9.

Plaintiff and his amicus have misread *Walden*, which is not confined to the intentional tort context, but rather

applies broadly to all assertions of specific personal jurisdiction, including under a stream-of-commerce theory.

First, the *Walden* opinion itself refutes Plaintiff and AAJ's narrow reading. The Court began by outlining the governing principles. The Court explained that "[f]or a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum state." 134 S. Ct. at 1121. This connection "must arise out of contacts that the defendant *himself* creates with the forum state." *Id.* at 1122 (quotation marks omitted). In other words, "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.*

After outlining these requirements, the Court then stated that "[t]hese same principles apply when intentional torts are involved." 134 S. Ct. at 1123. Thus, the Court expressly *rejected* the very distinction Plaintiff and AAJ attempt to draw -- that different rules apply to intentional tort cases. The Court's statement makes abundantly clear that the due process principles outlined

in the first part of its opinion, see 134 S. Ct. at 1121-23, apply to *all* assertions of specific jurisdiction, regardless of whether the alleged tort was intentional or unintentional. Indeed, the Court's use of mandatory directive language admits no exceptions. See *id.* at 1121 (to satisfy constitutional requirements for specific jurisdiction, the defendant's conduct "must" create a substantial nexus with the forum State); slip op. at 57 ("The *Walden* Court left no room for any exceptions.").

Nothing in *Walden* suggests that it is limited to intentional torts. Surely if the Court intended such a significant limitation on its holding, it would have said so. At a minimum, one of the Justices would likely have written a concurrence clarifying his or her understanding that the majority opinion was so limited. But no one did. Instead, *Walden* is written in broad language that gives no reason to think the Court intended an unspoken carve-out for stream-of-commerce cases.

Second, in setting forth the applicable due process principles, the Court in *Walden* relied heavily on one of its seminal stream-of-commerce cases, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). The Court cited

World-Wide Volkswagen for the proposition that “[t]he Due Process Clause of the Fourteenth Amendment constrains a State’s authority to bind a nonresident defendant to a judgment of its courts.” 134 S. Ct. at 1121. The Court cited it again to underscore that “[d]ue process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant -- not the convenience of plaintiffs or third parties.” *Id.* at 1122; *see also id.* at 1125 n.9. And the Court then discussed the facts of *World-Wide Volkswagen* to illustrate how personal jurisdiction over an automobile distributor could not rest on a purchaser’s driving the vehicle into another State. *Id.*

If, as Plaintiff and AAJ claim, the Supreme Court meant to confine *Walden* to the intentional tort context, it is unlikely the Court would have relied so heavily on its stream-of-commerce precedent. Indeed, that the Court used *World-Wide Volkswagen* throughout its opinion to illustrate the governing due process principles is powerful evidence that the Court did *not* intend the crabbed reading Plaintiff and AAJ urge this Court to adopt.

Third, other courts have reached the same conclusion as this Court, and applied *Walden* to cases brought under a "stream of commerce" theory. The Tennessee Supreme Court, for example, applied *Walden* in a case where the plaintiffs pursued jurisdiction based on a stream-of-commerce theory (among other theories). See *First Cmty. Bank v. First Tennessee Bank*, No. E201201422SCR11CV, 2015 WL 9025241, at *11-12 (Tenn. Dec. 14, 2015), cert. denied sub nom. *Fitch Ratings, Inc. v. First Cmty. Bank, N.A.*, No. 15-1151, 2016 WL 1046801 (U.S. June 27, 2016). The court quoted *Walden* at length, and applied its due process principles, in concluding that "there is nothing in the record to show that any of the investment products [that contained underlying securities from all 50 states] had any kind of specific or substantial connection to Tennessee such that the Defendants' ratings of those products was sufficient to constitute the minimum contacts necessary to give rise to specific personal jurisdiction." 2015 WL 9025241, at *12-13.

Similarly, the court in *Brady v. Sw. Airlines Co.*, No. 2:14-CV-2139 JCM-PAL, 2016 WL 259692 (D. Nev. Jan. 20, 2016), relied on *Walden* in a stream-of-commerce products

liability case alleging negligence. The court repeatedly cited *Walden* as establishing the relevant legal principles governing specific jurisdiction, then concluded that “[t]he fact that [the defendant] sold products to a corporation that does business in Nevada does not show that it anticipated being hauled into court [t]here”). *Id.* at *4.

Finally, Plaintiff and AAJ repeatedly insist that *Walden* did not announce a dramatic change in the law or rewrite the rules of personal jurisdiction. See Pl. Reh’g Br. at 5 (“*Walden* did not make new law.”); AAJ Br. at 8. To be sure, the *Walden* Court was quite clear that it was resolving the case based on well-settled principles. See 134 S. Ct. at 1126 (“Well-established principles of personal jurisdiction are sufficient to decide this case.”). But just because *Walden* interpreted and applied settled due process principles does not make it error for this Court to have relied on *Walden*. Indeed, it would have been anomalous had this Court *ignored* the Supreme Court’s most recent -- and unanimous -- articulation of the standards governing specific jurisdiction.

Walden is consistent with the Supreme Court’s modern personal jurisdiction decisions. Indeed, it is the logical

outgrowth of those decisions. Although *Walden* arose in the context of an intentional tort claim, the due process principles it articulates are drawn from the Court's prior decisions in this area, including its stream-of-commerce caselaw. This Court had it exactly right in looking to *Walden* for guidance in resolving this case.

II. This Court's Approach To *Walden* Does Not Conflict With The Approaches Of Other Courts.

Plaintiff cites five cases in an effort to create the impression that "[o]ther courts agree that *Walden* has no application in a stream of commerce case" -- and that by relying on *Walden*, this Court is defying a nationwide consensus. Pl. Reh'g Br. at 8 & n.17. The majority of the cases Plaintiff cites are unpublished decisions from trial courts in the Virgin Islands, so it is not readily apparent that Plaintiff has accurately identified a nationwide consensus. In any event, none of the five cases endorses Plaintiff's mistaken reading of *Walden*.

Plaintiff's lead authority is a ruling from the Virgin Islands that does not actually say what Plaintiff claims it does. In *Chabuz v. Putnam Lumber & Export Co.*, No. ST-13-CV-596, 2016 WL 1554987 (V.I. Super. Apr. 12, 2016), the

court did *not* hold that "*Walden* has no application in a stream of commerce case," as Plaintiff asserts. Pl. Reh'g Br. at 8. To the contrary, the court *applied Walden* in the stream-of-commerce context. See 2016 WL 1554987, at *6. After examining the facts of *Walden*, the court then held that "[u]nlike the police officer defendant in *Walden*," the defendant in the case at bar *had* "knowingly directed business" to the forum, and that "its contacts with the [forum] were intentional, not 'random, fortuitous, or attenuated.'" *Id.* (quoting *Walden*, 134 S. Ct. at 1123). Rather than demonstrate that "*Walden* has no application in a stream of commerce case," Pl. Reh'g Br. at 8, *Chabuz* reveals precisely the opposite.

Plaintiff relies on another unpublished decision from a Virgin Islands trial court, *Hills v. Whitecap Investment Corp.*, No. ST-12-CV-395, 2014 WL 7532186 (V.I. Super. Dec. 19, 2014). There, the court examined *Walden* at length and simply concluded that the case did not change its prior conclusion that the defendant was subject to personal jurisdiction where the plaintiff had "provid[ed] the Court with enough evidence to prove sufficient 'minimum contacts'

that satisfy the due process requirements of the United States Constitution." See 2014 WL 7532186, at *3-4.

Turning to federal court decisions, Plaintiff again alights on the Virgin Islands. In *MRL Development I, LLC v. Whitecap Investment Corp.*, No. 2013-48, 2014 WL 5441552 (D. V.I. Oct. 26, 2014), the court had previously found the exercise of specific jurisdiction to be proper, and simply found on reconsideration that *Walden* did not alter that conclusion. See 2014 WL 5441552, at *6.

Neither of the two non-Virgin Island cases Plaintiff cites support his position. In *State v. Atlantic Richfield Co.*, 2016 VT 22 (2016), although the court found that *Walden* "offers little, if anything, to the analysis here," the court did not declare *Walden* "inapplicable." *Id.* at ¶ 26. In fact, the court noted that *Walden* drew from *World-Wide Volkswagen* -- "the very case that introduced the stream-of-commerce doctrine." *Id.* In short, *Walden* did not articulate due process principles separate and distinct from those that apply in stream-of-commerce cases.

Finally, in *Estate of Moore v. Double D Services, Inc.*, No. Civ 14-4176, 2016 WL 430486 (D. S.D. Feb. 3, 2016), the court rejected the third-party plaintiff's request that the

defendant be subjected to personal jurisdiction based on an "effects test." The court did *not* deem *Walden* inapplicable to a stream-of-commerce case; rather, the court explained, *Walden* teaches that "even when intentional torts are involved, jurisdiction must be based on minimum contacts gained by the defendant through purposeful availment." *Estate of Moore*, 2016 WL 430486, at *4 n.6. In other words, even in the "easier" case -- in which the defendant commits an intentional tort -- there still must be evidence that the defendant purposefully availed itself of the forum. It follows *a fortiori* that if *Walden's* rules apply to intentional tort cases, they apply to "stream-of-commerce" cases like this one.

III. Plaintiff Is Asking This Court To Create Dispute-Blind Specific Jurisdiction.

In denying *Walden's* applicability -- and in urging this Court to adopt a sweeping approach to specific jurisdiction that no other court has adopted -- Plaintiff asks this Court to create dispute-blind specific jurisdiction. This Court recognized what Plaintiff was asking it to do, and properly rejected it. See slip op. at 60 ("We are reluctant to create, absent supporting precedent from the

United States Supreme Court, dispute-blind specific jurisdiction."). The Court should adhere to that ruling.

The Supreme Court has explained the difference between general and specific jurisdiction. General jurisdiction is dispute-blind, "all-purpose" jurisdiction, whereas specific jurisdiction is dispute-specific and "case-linked." *Goodyear Dunlop Tires Ops. S.A. v. Brown*, 564 U.S. 915, 919 (2011). "In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Id.* (quoting von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1136 (1966)).

Here, Plaintiff asks this Court to find specific jurisdiction in any case where there exists a "regular flow of [the manufacturer's] products into the State," Pl. Reh'g Br. 7, regardless of whether the product at issue in the dispute ended up in the State as a result of the independent actions of a third party. That is not a permissible approach to specific jurisdiction because it does not look to whether the defendant's in-state actions gave rise to the dispute. *See Goodyear*, 564 U.S. at 919

("[s]pecific jurisdiction . . . depends on an affiliation between the forum and the underlying controversy") (quotation marks and brackets omitted); *Daimler*, 134 S. Ct. at 754 (specific jurisdiction "arises out of or relates to the defendant's contacts with the forum") (citation and brackets omitted); *Walden*, 134 S. Ct. at 1121 (same).

Plaintiff's proposed approach to specific jurisdiction would amount to a new form of *general* jurisdiction, applicable only to manufacturers. This Court was correct in faithfully following the mandates of the Supreme Court and affirming the trial court's conclusion that it lacked personal jurisdiction over GM Canada.

CONCLUSION

Walden means what it says. "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." 134 S. Ct. at 1121. Because Plaintiff failed to identify any suit-related conduct, this Court's decision is correct and there is no reason to rehear this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following by United States Mail, electronic mail, and/or by the Court's ACIS notification system, on this the 29th day of July, 2016:

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APPENDIX A

Corporate Members of the Product Liability Advisory Council

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