

SUPREME COURT OF ALABAMA
In Special Session at The University of Alabama School of Law
Thursday, March 5, 2009

FIRST CASE, 9:00 A.M.

1071433 - Ex parte DBI, Inc., f/k/a Duck Boo International Co., Ltd.
(In re: Tonya Leann Leytham, administrator and personal representative
of the estate of Tiffany Stabler, deceased, and as mother and next
friend of Tiffany Stabler, deceased v. Kia Motors America, Inc., et
al.)

Attorneys for DBI: Michael D. Knight; Karen T. Luce
Attorneys for Leytham: David S. Cain, Jr.; George M. Dent III; George W.
Finkbohner III; David G. Wirtes, Jr.

BACKGROUND: DBI, Inc., formerly known as Duck Boo International Co., Ltd., is a defendant in an action in the Mobile Circuit Court brought by Tonya Leann Leytham after her daughter, Tiffany Stabler, died as a result of an automobile accident in which Stabler was driving a Kia Sephia equipped with a seat belt manufactured by DBI. Leytham alleges that the seat belt Stabler was wearing malfunctioned and that Stabler was ejected from her vehicle and suffered fatal injuries. DBI petitioned for a writ of mandamus asking this Court to direct the trial court to dismiss the claims against it on the basis that the trial court lacks personal jurisdiction over DBI. DBI is located in South Korea and contends that it does no direct business with, or in, the United States. We held that further discovery on the jurisdiction issue was necessary, and, therefore, we denied DBI's petition as premature. Ex parte Duck Boo Int'l Co., 985 So. 2d 900 (Ala. 2007). After discovery was completed, the trial court again denied DBI's motion to dismiss, and DBI filed a second petition for a writ of mandamus.

DBI'S ARGUMENTS: A plaintiff who seeks to subject a defendant to personal jurisdiction in Alabama must show that the defendant has taken action purposefully directed toward the State. Ex parte Alloy Wheels Int'l, Ltd., 882 So. 2d 819 (Ala. 2003). The "purposeful-direction" test adopted by this Court in Alloy Wheels is the same as Justice O'Connor's "stream-of-commerce-plus" test set out in her plurality opinion in Asahi Metal Indus. v. Superior Court, 480 U.S. 102 (1987), under which the placement of a product into the stream of commerce, without more, is not an act purposefully directed toward the forum state. A defendant's awareness that the stream of commerce could sweep a product into the State does not convert the act of placing the product into the stream into an act purposefully directed toward the State. DBI is not subject to jurisdiction in Alabama merely because it placed a product into the stream of commerce in the American market, and there is no evidence that DBI purposefully directed any activities toward Alabama. In response to DBI's first petition, Leytham urged this Court to overrule Alloy Wheels and adopt Justice Stevens's personal-jurisdiction test under Asahi, which evaluates whether a defendant purposefully availed itself of the privilege of doing business in the forum state based on the volume, value, and hazardous character of the product. Even if this Court had adopted the Stevens test, Leytham lacked evidence of volume and value, two critical factors under that test. Leytham now argues that the test Alabama should apply is Justice Brennan's "stream-of-commerce" test set out in Asahi. Under this test, the fact that a manufacturer places a product into the stream of commerce is sufficient to subject the manufacturer to personal jurisdiction, so long as it is aware that the final product is being marketed in the forum state. DBI argues that there is no evidence that DBI knew its products were being marketed in Alabama and that Leytham should be precluded from arguing that DBI is subject to personal jurisdiction under the stream-of-commerce test, which has never been adopted by this Court.

LEYTHAM'S ARGUMENTS: Even jurisdictions that have adopted Justice O'Connor's stream-of-commerce-plus test have not required as much activity directed toward the forum state as Alloy Wheels requires. Other courts have held that purposeful availment does not require that the forum state be singled out any differently than any other state in a national marketing effort. Activities such as designing a product for sale in the national market by a widely known national automobile manufacturer that sells its vehicles in Alabama and maintaining responsibility for warranty claims serve to invoke the benefits of Alabama laws; thus, it is not unreasonable to subject DBI to suit in Alabama if its allegedly defective product has injured an Alabama resident. This Court should overrule Alloy Wheels and adopt Justice Stevens's test or Justice Brennan's stream-of-commerce test. Furthermore, modern transportation and communications have made it less burdensome for a party sued to defend

itself in a state in which it engages in economic activity. In addition to DBI, Leytham has sued Kia Motors, the manufacturer of the vehicle involved in the accident, and the dealership that sold the vehicle. Requiring her to file a separate action against DBI in Korea would spread thin her resources, hamper her ability to obtain justice, and unnecessarily waste judicial resources. The burden on DBI to defend itself in Alabama would not be as great. Alabama has an interest in seeing that its citizens who use products a company sends into the State are not seriously injured because of a defect in the product.