IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2006 Term

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 32751

JEREMIAH "BART" MORRIS,
Plaintiff Below, Appellant

v.

CROWN EQUIPMENT CORPORATION,
a foreign corporation; and JEFFERDS CORPORATION,
dba HOMESTEAD MATERIALS HANDLING COMPANY,
a West Virginia Corporation,
Defendants Below, Appellees

Appeal from the Circuit Court of Kanawha County
Hon. Tod J. Kaufman, Judge
Case No. 04-C-1174

REVERSED AND REMANDED

Submitted: March 29, 2006
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JUSTICE STARCHER delivered the Opinion of the Court.

JUSTICE MAYNARD dissents and reserves the right to file a dissenting opinion.

JUSTICE ALBRIGHT concurs and reserves the right to file a concurring opinion.

JUSTICE BENJAMIN concurs and reserves the right to file a concurring opinion.

SYLLABUS BY THE COURT

1. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syllabus Point 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

2. Under the Privileges and Immunities Clause of the *United States Constitution*, Art. IV, Sec. 2, the provisions of *W.Va. Code*, 56-1-1(c) [2003] do not apply to civil actions filed against West Virginia citizens and residents.

3. *W.Va. Code*, 56-1-1(c) [2003] does not require a plaintiff to separately establish venue for each defendant.

Starcher, J.:

In this case we hold that a plaintiff cannot be denied the right to bring a products liability lawsuit in this state against a West Virginia corporation and an out-of-state corporation merely because the plaintiff is a resident of another state.

I.
Facts & Background

The complaint in the instant case alleged the following facts: the appellant and plaintiff below, Jeremiah "Bart" Morris ("Morris"), a resident and citizen of Virginia, suffered a severe leg injury at his place of employment in Virginia while operating a stand-up forklift that was distributed and serviced by the appellee and defendant below, Jefferds Corporation, dba Homestead Materials Handling Company ("Jefferds"), a West Virginia corporation. The forklift was designed, manufactured, and distributed by the appellee and defendant below, Crown Equipment Corporation ("Crown"), an Ohio corporation.[1]

[1]The complaint further alleged that Jefferds was incorporated under the laws of West Virginia, had its principal place of business in Kanawha County, West Virginia, conducted business in Kanawha County, West Virginia, and was engaged in the business of servicing, maintaining, providing warnings, providing training, testing, inspecting, marketing, distributing, and selling materials handling equipment, including Crown stand-up forklifts. The complaint further alleged that Jefferds provided, serviced, maintained, tested, inspected, marketed, provided with warnings, provided training for, and distributed to Morris' employer the Crown stand-up forklift upon which Morris was injured.

On April 30, 2004, Morris filed a civil action against Jefferds and Crown in the Circuit Court of Kanawha County, West Virginia, alleging various products liability theories of recovery, including negligence, strict liability, failure to warn, and breach of warranty, as well as asserting a claim for punitive damages.

Jefferds and Crown filed motions to dismiss the complaint for improper venue based upon *W.Va. Code*, 56-1-1 [2003], which states:

> (a) Any civil action or other proceeding, except where it is otherwise specially provided, may hereafter be brought in the circuit court of any county:
> (1) Wherein any of the defendants may reside or the cause of action arose, except that an action of ejectment or unlawful detainer must be brought in the county wherein the land sought to be recovered, or some part thereof, is;
> (2) If a corporation be a defendant, wherein its principal office is or wherein its mayor, president or other chief officer resides; or if its principal office be not in this state, and its mayor, president or other chief officer do not reside therein, wherein it does business; or if it be a corporation organized under the laws of this state which has its principal office located outside of this state and which has no office or place of business within the state, the circuit court of the county in which the plaintiff resides or the circuit court of the county in which the seat of state government is located shall have jurisdiction of all actions at law or suits in equity against the corporation, where the cause of action arose in this state or grew out of the rights of stockholders with respect to corporate management;
> (3) If it be to recover land or subject it to a debt, where the land or any part may be;
> (4) If it be against one or more nonresidents of the state, where any one of them may be found and served with process or may have estate or debts due him or them;
> (5) If it be to recover a loss under any policy of insurance upon either property, life or health or against injury to a person, where the property insured was situated either at the date of the policy or at the time when the right of action accrued or the person

insured had a legal residence at the date of his or her death or at the time when the right of action accrued;

(6) If it be on behalf of the state in the name of the attorney general or otherwise, where the seat of government is; or

(7) If a judge of a circuit be interested in a case which, but for such interest, would be proper for the jurisdiction of his or her court, the action or suit may be brought in any county in an adjoining circuit.

(b) Whenever a civil action or proceeding is brought in the county where the cause of action arose under the provisions of subsection (a) of this section, if no defendant resides in the county, a defendant to the action or proceeding may move the court before which the action is pending for a change of venue to a county where one or more of the defendants resides and upon a showing by the moving defendant that the county to which the proposed change of venue would be made would better afford convenience to the parties litigant and the witnesses likely to be called, and if the ends of justice would be better served by the change of venue, the court may grant the motion.

(c) *Effective for actions filed after the effective date of this section, a nonresident of the state may not bring an action in a court of this state unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in this state: Provided, That unless barred by the statute of limitations or otherwise time barred in the state where the action arose, a nonresident of this state may file an action in state court in this state if the nonresident cannot obtain jurisdiction in either federal or state court against the defendant in the state where the action arose. A nonresident bringing such an action in this state shall be required to establish, by filing an affidavit with the complaint for consideration by the court, that such action cannot be maintained in the state where the action arose due to lack of any legal basis to obtain personal jurisdiction over the defendant.*

In a civil action where more than one plaintiff is joined, each plaintiff must independently establish proper venue. A person may not intervene or join in a pending civil action as a plaintiff unless the person independently establishes proper venue. If venue is not proper as to any such nonresident plaintiff in any court of this state, the court shall dismiss the claims of the

> *plaintiff without prejudice to refiling in a court in any other state or jurisdiction.*

(Emphasis added.)

Jefferds and Crown argued in their motions to dismiss that Morris is a nonresident[2] of West Virginia, and that no substantial part of Morris' cause of action arose in West Virginia. Therefore, Jefferds and Crown argued, the provisions of *W.Va. Code*, 56-

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[2]This opinion will primarily use the term "nonresident" to mean a nonresident or noncitizen of West Virginia; and similarly, the term" resident" will mean resident *or* citizen. It is now established that under the Privileges and Immunities Clause there is ordinarily no difference between discrimination based on a person's "residence" and discrimination based on a person's "citizenship."

> . . . [D]espite some initial uncertainty . . . it is now established that the terms "citizen" and "resident" are "essentially interchangeable," *Austin v. New Hampshire*, 420 U.S. 656, 662, n. 8[, 95 S.Ct. 1191, 1195 n. 8, 43 L.Ed.2d 530 n. 8] (1975), for purposes of analysis of most cases under the Privileges and Immunities Clause.

United Bldg. and Const. Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden, 465 U.S. 208, 216, 104 S. Ct. 1020, 1026 - 1027, 79 L.Ed. 2d 249, __ (1984).

> Similarly, while the Court unquestionably has come to treat the terms "citizen" and "resident" in this area as "essentially interchangeable," *Austin v. New Hampshire*, 420 U.S., at 662, n. 8, it has done so not out of a general disregard for the Constitution's language, but rather because the practical relationship between residence and citizenship is close enough that discrimination on the basis of the one criterion effectively amounts to discrimination based on the other.

Id. at 234, 104 S.Ct. at 1036, 79 L. Ed. 2d at 249 (1984). Thus, when weighing the persuasiveness and relevance of decisions in cases that statedly rest their reasoning on the premise that discrimination against individuals on the basis of citizenship is constitutionally suspect – while discrimination on the basis of residence is constitutionally inoffensive – the current irrelevance of that distinction in most cases must be taken into account.

1-1(c)[2003] required dismissal of Morris' case on improper venue grounds, unless Morris demonstrated by affidavit that he could not bring his case in some other jurisdiction.

Morris argued in reply that the application of *W.Va. Code*, 56-1-1(c) [2003] to Morris as a nonresident in the fashion suggested by Jefferds and Crown was unconstitutional under the Privileges and Immunities Clause of the United States *Constitution*, Art. IV, Sec. 2, which states in pertinent part: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."[3]

Morris argued that the interpretation and application of *W.Va. Code*, 56-1-1(c) [2003] asserted by Jefferds and Crown was constitutionally impermissible because such an interpretation and application would impose a categorical bar upon nonresidents of West Virginia in their access to the West Virginia courts in cases where an otherwise similarly situated resident of West Virginia would not experience such a bar.

Morris further argued that Jefferds' status as a West Virginia corporation established proper venue as to Jefferds, and that because Jefferds served as a venue-giving defendant, Morris could properly join Crown as well.

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[3]Morris also raised the Open Courts Clause of the *West Virginia Constitution*, Art. III, Sec. 17, which states that:

> The courts of this State shall be open, and *every person*, for an injury done to him, in his person, property, or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

(Emphasis added.)
In light of our disposition of the instant case, we do not address this constitutional provision.

Finally, Morris argued that the statutory prerequisite for the application of *W.Va. Code*, 56-1-1(c) [2003] – that "all or a substantial part of the acts or omissions giving rise to the claim asserted [did not occur in West Virginia]" – was not established. Morris argued that his Complaint and two subsequent Amended Complaints in fact did set forth allegations establishing that a "substantial part" of the acts or omissions giving rise to his claims did occur in West Virginia.[4]

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[4]The Federal venue statute, 28 U.S.C. Sec. 1391, provides that venue lies in any district "in which *a substantial part* of the events or omissions giving rise to the claim occurred . . ." (Emphasis added). "[T]his rule . . . is open to the possibility that a claim may have arisen in more than one district . . .," *Hodson v. A. H. Robins Co.*, 528 F. Supp. 809, 814 (E.D. Va. 1981). "[T]he plaintiff is not required to establish that his chosen venue 'has the most substantial contacts to the dispute; rather, it is sufficient that *a* substantial part of the events occurred [here], even if a greater part of the events occurred elsewhere.'" *Country Home Prods. v. Schiller-Pfeiffer, Inc.*, 350 F. Supp. 2d 561, 568 (D. Vt. 2004) (emphasis added, *citing Kirkpatrick v. Rays Group*, 71 F. Supp. 2d 204, 212 (S.D.N.Y. 1996)). The Supreme Court of Pennsylvania has stated that determining whether conduct is a substantial factor ". . . simply involves the making of a judgment as to whether defendant's conduct . . . is so insignificant that no ordinary mind would think of it as a cause for which a defendant should be held responsible." *Ford v. Jeffries*, 379 A. 2d 111, 114 (Pa. 1977) (citing the *Restatement (Second) of Torts* sec. 431, comments a. and b.).

For reasons that do not appear in the record, the circuit court did not grant Morris' timely motions for leave to amend his complaint, and denied Morris' requests for leave to conduct limited discovery to establish further facts that would show that venue was proper in West Virginia. A party may amend a pleading by leave of court, and such leave shall be freely given when justice requires. *W.Va.R.Civ.P.* 15(a); *Brooks v. Isinghood*, 213 W.Va. 675, 684, 584 S. E. 2d 531 (2003).

The circuit court did indicate that it had "considered" the allegations in Morris' amended complaints in ruling on the Jefferds and Crown motions to dismiss.

Morris's Second Amended Complaint stated, in part:

> i. Jefferds inadequately serviced and maintained, failed to provide adequate warnings, failed to provide adequate training, provided warranties, failed to adequately test, failed to adequately inspect, failed to adequately analyze the dangers of,

(continued...)

[4](...continued)

failed to adequately disclose the dangers of, failed to guard against the dangers of, marketed, distributed, installed, and/or sold the forklift at issue at or from its offices in West Virginia;

ii. Jefferds made (or failed to make) management level analyses and decisions from its West Virginia corporate headquarters related to service and maintenance schedules and items; training of service and maintenance personnel; product safety and the dangers associated with the use of the product; operator safety; warnings to be provided and the sufficiency thereof; operator training and instruction and the sufficiency thereof; warranties to be provided; testing; inspection; necessary guarding; product lines to be carried; marketing; distribution; sale; installation; associated contractual arrangements or other agreements; and other items related to stand-up forklifts in general, and the forklift which caused the plaintiff's injury in particular;

iii. Jefferds made the contractual arrangements or other agreements related to the provision and installation of the subject forklift to the Alcoa facility, through its office in West Virginia.

iv. The instructions, manuals, warnings, service records, installation records, warranties, and other information about the forklift were provided by Jefferds out of its West Virginia offices;

v. The employees of Jefferds who serviced the forklift both prior to and after installation at the Alcoa facility were provided from its office in West Virginia;

vi. The employees of Jefferds who serviced the forklift both prior to and after installation at the Alcoa facility were trained at its office in West Virginia;

vii. Jefferds failed, at its office in West Virginia, to properly evaluate and investigate the design of Crown's stand-up forklifts and the associated dangers;

viii. Jefferds failed, at its office in West Virginia, to properly evaluate and investigate the accident history of Crown stand-up forklifts, and to warn its customers and end users thereof;

ix. Jefferds failed, at its office in West Virginia, to adequately

(continued...)

The circuit court accepted Jefferds' and Crown's arguments based on Morris' nonresidency and *W.Va. Code*, 56-1-1(c) [2003]. By orders dated September 1, 2004, and November 24, 2004, the circuit court granted the appellees' motions to dismiss. The circuit court also issued an "Order Denying Plaintiff's Motion to Reconsider" on November 29, 2004. Morris appeals from these orders.

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[4](...continued)

> analyze the hazards to the operators of the forklifts and guard against the same;
>
> x. Jefferds failed, from its offices in West Virginia, to provide adequate operator training and instruction;
>
> xi. Jefferds marketed, distributed, sold, or otherwise installed the forklift from its offices in West Virginia;
>
> x. Jefferds engaged in other, as yet unidentified, substantial acts or omissions related to the claims being asserted.

Although it is not necessary to decide this issue in light of our resolution of the instant case, it seems clear that the plaintiff's Second Amended Complaint does sufficiently allege that a "substantial" portion of the acts or omissions giving rise to Morris' claims occurred in West Virginia.

II.
Standard of Review

A trial court's ruling on a motion to dismiss is reviewed under a *de novo* standard. *Kopelman and Associates v. Collins*, 196 W.Va. 489, 492, 473 S. E. 2d 910, 913 (1996). Constitutional challenges relating to a statute are reviewed pursuant to a *de novo* standard of review. *West Virginia ex rel. Citizens Action Group v. West Virginia Economic Development Grant Committee*, 213 W.Va. 255, 261-262, 580 S. E. 2d 869, 875-876 [2003]. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review." Syllabus Point 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

III.
Discussion

We begin our discussion by examining the Privileges and Immunities Clause, Art. IV, Sec. 2, of the *United States Constitution*. We then look to what courts have said about access to the courts and the Clause.

A.
Privileges and Immunities

In *Austin v. New Hampshire,* 420 U.S. 656, 662, 95 S.Ct. 1191, 1195, 43 L.Ed. 2d 530, 535-536 (1975), the Court stated:

> The Privileges and Immunities Clause, by making noncitizenship or nonresidence an improper basis for locating a special burden, implicates not only the individual's right to nondiscriminatory treatment but also, perhaps more so, the structural balance essential to the concept of federalism.

(Footnote omitted.)

In *Baldwin v. Fish and Game Commission of Montana,* 436 U.S. 371, 380-382, 98 S.Ct. 1852, 1858-1859, 56 L.Ed. 2d 354, 363-364 (1978), the Court quoted from *Paul v. Virginia*, 8 Wall. 168, 180 (1869):

> It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

and from *Hague v. CIO*, 307 U.S. 496, 511, 59 S.Ct. 954, 962, 83 L. Ed. 1423, 1434 (1939) (Roberts, J. concurring):

> . . . Article IV, § 2, does not import that a citizen of one State carries with him into another fundamental privileges and immunities which come to him necessarily by the mere fact of his citizenship in the State first mentioned, but, on the contrary, that in any State every citizen of any other State is to have the same privileges and immunities which the citizens of that State enjoy. The section, in effect, prevents a State from discriminating against citizens of other States in favor of its own.

(Footnotes omitted.)

B.
Access to the Courts

On the subject of access to the courts in the context of the Privileges and Immunities Clause, Am. Jur. 2d, *Constitutional Law*, Sec. 769 (2006) says:

> Among the privileges and immunities of citizenship is included the right of access to courts for the purpose of bringing and maintaining actions. This privilege includes the right to employ the usual remedies for the enforcement of personal rights in actions of every kind. *While a state may decide whether and to what extent its courts will entertain particular causes, any policy the state may choose to adopt must operate in the same way upon citizens of other states as upon its own, and the privileges it affords to the latter class it must afford to the same extent to the other, but not to any greater extent.*

(Footnotes omitted, emphasis added.)

In *McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 233, 54 S.Ct. 690, 691, 78 L. Ed. 1227, 1229 (1934), the Court stated:

> The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution. The privileges and immunities clause requires a state to accord to citizens of other states

> substantially the same right of access to its courts as it accords to its own citizens.

(Citation omitted.)

In *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148-149, 28 S.Ct. 34, 35, 52 L.Ed.143, 146 (1907), the Court stated:

> The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.

(Citations omitted.)

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> The state policy decides whether and to what extent the state will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions. . . . But any policy the state may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other. Any law by which privileges to begin actions in the courts are given to its own citizens and withheld from the citizens of other states is void, because in conflict with the supreme law of the land.

In *Canadian Northern Ry. Co. v. Eggen*, 252 U.S. 553, 562, 40 S.Ct. 402, 404, 64 L.Ed. 713, 716 (1920), the Court stated:

> . . . [t]he constitutional requirement is satisfied if the nonresident is given access to the courts of the State upon terms which in themselves are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically and precisely the same in extent as those accorded to resident citizens. The power is in the courts, ultimately in this court, to determine the adequacy and reasonableness of such terms. A

> man cannot be said to be denied, in a constitutional or in any rational sense, the privilege of resorting to courts to enforce his rights when he is given free access to them for a length of time reasonably sufficient to enable an ordinarily diligent man to institute proceedings for their protection.[5]
>
> Finally, a leading commentator has said:
>
> > The familiar rhetorical statements of the unqualified duty of a state to open its courts to citizens of other states are no longer to be taken literally . . . These statements do, however, express the truth that *the privileges-and-immunities clause requires a state to open the doors of its courts to citizens of other states who assert claims against local residents and citizens, even on causes of action predicated upon the law of another state, if it would allow its own citizens to assert such a cause of action. . . .* [I]t is the duty of the governments to make their citizens and persons residing within their borders respond to their civil obligations; any other rule would be intolerable.

(Emphasis added.) Carrie and Schechter, "Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities," 69 Yale Law Journal 1323, 1383 (1960).[6]

From the foregoing authorities, it may be concluded that there is a strong constitutional disfavoring of the categorical exclusion of nonresident plaintiffs from a state's courts under venue statutes when a state resident would be permitted to bring a similar suit.

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[5]*See also Missouri Pacific Railroad Co. v. Clarendon Boar Oar Co.*, 257 U.S. 533, 535, 42 S.Ct. 210, 211, 66 L. Ed. 354, 356 (1922) ("[The Privileges and Immunities Clause] secures citizens of one State the right to resort to courts of another, equally with citizens of the latter State[.]"); *Miles v. Illinois Central Railroad Co.*, 315 U.S. 698, 704, 62 S.Ct. 827, 830, 86 L. Ed. 1129, 1134, (1942); *Travis v. Yale & Towne Manufacturing Co.*, 252 U.S. 60, 78, 40 S.Ct. 228, 64 L.Ed. 460, 469 (1920).

[6]*See also Gober v. Federal Life Ins. Co.*, 255 Mich. 20, 24, 237 N.W. 32, 33 (1931) (applying the Privileges and Immunities Clause) ("If defendant were a domestic corporation, there would be no doubt of plaintiff's right to sue in this State on her cause of action.").

The appellee Jefferds argues that despite the foregoing authority, *W.Va. Code*, 56-1-1(c) [2003] should be read to set forth a constitutionally valid rule that categorically bars nonresidents from bringing certain lawsuits – even lawsuits against West Virginia residents – when the same lawsuit could be brought by a West Virginia resident.

That is, under Jefferds' proposed reading and application of *W.Va. Code*, 56-1-1(c) [2003], if Mr. Morris and a West Virginia resident had both been injured in the accident in question, the West Virginia resident would encounter no obstacle to filing suit against Jefferds in West Virginia. Only Morris would be so barred, by reason of his residency in Virginia. However, the foregoing-quoted authorities are agreed in stating that Privileges and Immunities Clause counsels against such discrimination against nonresidents and favoritism and protectionism on behalf of residents.

Jefferds argues that this Court is restricted by our decision in *State ex rel. Riffle v. Ranson*, 195 W.Va. 121, 464 S.E.2d 763 (1995) from narrowing or constraining a broad, literal application of *W.Va. Code*, 56-1-1(c) [2003] that would categorically bar suits by nonresidents in West Virginia courts in instances when the same suit could be brought by a West Virginian – even cases against West Virginia defendants.

Our decision in *Riffle* simply deferred to Legislatively-prescribed principles governing intra-state venue. However, in *Riffle* this Court explicitly disavowed applying its decision to interstate situations. 195 W.Va. at 128, n.11, 464 S.E.2d 763, at 770, n.11. This Court also noted in *Riffle* that none of the parties had raised constitutional challenges to the statutory language at issue in that case. *Id.*, 195 W.Va. at 126 n.6, 464 S. E. 2d at 768 n.6.

Accordingly, *Riffle* does not and could not authorize this Court to disregard the Privileges and Immunities Clause of the *United States Constitution*, when that issue is properly brought, as it affects a provision of our venue statutes in an interstate context.

A reading or application of *W.Va. Code*, 56-1-1(c) [2003] that would categorically immunize a West Virginia defendant like Jefferds from suit in West Virginia by a nonresident would contravene the constitutionally permissible scope of the venue statutes in an interstate context. There is no evidence in the cases cited by the parties or identified in this Court's research showing any trend in favor of such distinctions. Additionally, erecting such barriers would contravene established West Virginia law, including other provisions of *W.Va. Code*, 56-1-1 [2003].[7]

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[7]*W.Va. Code*, 56-1-1(a)(1) [2003] states that venue lies against a domestic corporation doing business in this State wherein its principal office is located, or where its president or principal officer resides. We recognized in *Wetzel County Savings and Loan v. Stern Bros., Inc*., 156 W.Va., 693, 699, 195 S.E. 2d 732, 737 (1973), that the principal place of business of the defendant corporation was an appropriate venue for a lawsuit. In the Syllabus of *State ex rel. Huffman v. Stephens*, 206 W.Va. 501, 526 S.E.2d 23 (1999), we stated:

> Whether a corporation is subject to venue in a given county in this State under the phrase in W. Va.Code, 56-1-1(b), "wherein it does business" depends upon the sufficiency of the corporation's minimum contacts in such county that demonstrate it is doing business . . ..

See Syllabus, *Brent v. Board of Trustees of Davis and Elkins College*, 163 W.Va. 390, 256 S.E.2d 432 (1979):

> If a corporation has made a contract to be performed in whole or in part by any party thereto in a county, has committed a tort in whole or in part in that county, or has manufactured, sold, offered for sale or supplied any product in a defective condition and such product has caused injury to any person or property within that county, it is doing business there and the county's

(continued...)

It is axiomatic that

> . . . wherever an act of the legislature can be so *construed and applied* as to avoid a conflict with the constitution, and give it the force of law, such construction will be adopted by the court.

(Emphasis added.)

Peel Splint Coal Co. v. State, 15 S.E. 1000, 1004 (1892). A narrow-breadth reading of a statute to assure that its application is constitutionally proper is appropriate as a less-intrusive remedy, *cf. Weaver v. Shaffer*, 170 W.Va. 107, 111, 290 S.E.2d 244, 248 (1980).

We therefore hold that under the Privileges and Immunities Clause of the *United States Constitution*, Art. IV, Sec. 2, the provisions of *W.Va. Code*, 56-1-1(c) [2003] do not apply to civil actions filed against West Virginia citizens and residents.

Applying the foregoing principles to the facts of the instant case, we conclude that the circuit court impermissibly applied *W.Va. Code*, 56-1-1(c) [2003] to treat Mr. Morris' nonresidency as a categorical bar to his bringing a suit in West Virginia against Jefferds. Moreover, Jefferds is a West Virginia corporation, and the provisions of *W.Va. Code*, 56-1-1(c) [2003] do not apply to Morris' suit against Jefferds.

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[7](...continued)

> courts have venue to try suits against it which arise from or grow out of such contract, tort or manufacture, sale, offer for sale or supply of such defective product.

See also McGuire v. Fitzsimmons, 197 W.Va. 132, 136, 475 S.E. 2d 132, 136 (1996):

> The plain language of W. Va.Code, 56-1-1(a)(1) [1986] does not limit the venue to one county but provides at least two possible justifications for proper venue: either the residence of the defendants or where the "cause of action arose."

Therefore, the circuit court's dismissal of Morris' suit against Jefferds must be reversed.

C.
Venue-Giving Defendant

We turn our discussion to the circuit court's dismissal of Morris' case against Crown, the manufacturer of the product that Morris says caused his injury. Crown is not a West Virginia corporation, but it is the manufacturer of a product that was sold and distributed by a West Virginia corporation.

It must first be recognized that Morris' suit against Crown is essentially a products liability case. Products liability suits typically allege that a manufacturer designed and/or produced a product and put the product into the stream of commerce, and that the product was unsafe or flawed in such a way so as to give rise to the liability of the manufacturer for injuries resulting from the use of the product. The alleged unsafeness or flaw(s) may be as a result of the actual design or construction of the product, or in the adequacy of warnings provided to the user(s) of the product. *See generally Morningstar v. Black and Decker Mfg. Co.*, 162 W.Va. 857, 253 S.E.2d 666 (1979) and its progeny.

Products liability cases are a feature of every state's law, and manufacturers who put their products into the stream of interstate commerce expect that they may be called to account in court for the safety of the design and manufacture of their products in other states – even though no "culpable" conduct by the manufacturer relating to the design or manufacture of the product occurred in the jurisdiction in which the claim against the

manufacturer is brought. This fundamental principle of products liability law underlies our analysis.

> A second fundamental principle that must be recognized is that:
>
> This Court follows the venue-giving defendant principle, whereby, once venue is proper for one defendant, it is proper for all other defendants subject to process.

Syllabus Point 1, *Staats v. Co-Operative Transit Co.*, 125 W.Va. 473, 24 S.E.2d 916 (1943); *McConaughey v. Bennett's Executors*, 50 W.Va. 172, 179, 40 S.E. 540, 541 (1901). *See also State ex rel. Kenamond v. Warmuth*, 179 W.Va. 230, 231, 366 S.E.2d 738, 739-40 (1988); *McGuire v. Fitzsimmons*, 197 W.Va. 132, 137, 475 S.E.2d 132, 137 (1996); *Union Carbide & Carbon Corp. v. Linville*, 142 W.Va. 160, 164-165, 95 S.E. 2d 54, 57 (1956); *Webber v. Offhaus*, 135 W.Va. 138, 146-147, 62 S.E. 2d 690, 696 (1950); *McConaughey & Co. v. Bennett*, 50 W.Va. 172, 179, 40 S.E. 540, 542-543 (1901). The principle of the venue-giving defendant has been an established feature of our law for more than one hundred years, and it is closely intertwined with our procedural rules on joinder.[8]

[8]The mandatory joinder rule of *W.Va.R.Civ.P.*, Rule 19(a) requires a plaintiff to join in one action all persons who are subject to service of process and in whose absence complete relief cannot be accorded among those already parties. Similarly, the permissive joinder rule of *W.Va.R.Civ.P.*, Rule 20, permits a plaintiff to join as defendants all persons whose liability arises "out of the same transaction, occurrence, or series of occurrences and if any question of law or fact common to all defendants will arise in the action." The goal of both mandatory and permissive joinder is the promotion of judicial economy by preventing both the duplication of effort and the uncertainty embodied in piecemeal litigation.

Complementing and reflecting the longstanding venue-giving defendant principle in our case law and our procedural rules, the provisions of *W.Va. Code*, 56-1-1 [2003] state that venue for "*any* civil action" or "*the* cause of action" is appropriate "wherein *any* of the defendants may reside . . ." and "where *one or more* of the defendants resides." *W.Va. Code*, 56-1-1(a) and (b) [2003] (emphasis added).

Crown argues that despite the fact that products liability cases are commonly brought against manufacturers in jurisdictions other than where the product was designed or built, and despite West Virginia's settled venue-giving defendant principle, because Morris is a nonresident of West Virginia, Morris must show *separate acts by Crown that occurred in West Virginia* (*i. e.*, Morris must separately "establish venue" for Crown) before Morris can join Crown as a defendant along with Jefferds in Morris' suit in West Virginia.

In support of this argument, Crown points to language in *W.Va. Code*, 56-1-1(c)[2003] which would bar suit by a nonresident in West Virginia ". . . unless all or a substantial part of the acts or omissions giving rise to *the claim* asserted occurred in this state." Crown notes that *W.Va. Code*, 56-1-1(a) and (b) [2003] use the terms "cause of action" or "civil action" when saying that a case may be brought wherever one of the defendants is located, see discussion *supra* – while *W.Va. Code*, 56-1-1(c)[2003] uses the term "claim." Crown argues that Morris therefore must separately establish venue for his "claim" against Crown, by showing culpable "acts or omissions" by Crown that occurred in West Virginia.

A rule in accord with Crown's argument would run counter to established principles of joinder and judicial economy. Modern economies operate in complex, multi-jurisdictional networks of designers, manufacturers, distributors, retailers, purchasers, and users. When reasonably possible, legal claims involving these sorts of parties that arise from particular incidents and injuries involving a product should be resolved in a unitary forum.

As this Court recently stated in *Charleston Area Medical Center, Inc. v. Parke-Davis*, 217 W. Va. 15, 21, 614 S.E.2d 15, 21 (2005), quoting *Board of Ed. v. Zando, et. al.*, 182 W.Va. 597, 603-604, 390 S.E. 2d 796, 802-803:

> [t]he fundamental purpose of inchoate contribution is to enable all parties who have contributed to the plaintiff's injuries to be brought into one suit. Not only is judicial economy served, but such a procedure also furthers one of the primary goals of any system of justice – to avoid piecemeal litigation which cultivates a multiplicity of suits and often results in disparate and unjust verdicts.

In the instant case, where a substantial part of the culpable acts or omissions of one joint tortfeasor (Jefferds) are alleged to have occurred in West Virginia, and where the culpable acts or omissions of a second joint tortfeasor (Crown) are alleged to have occurred outside West Virginia, a requirement that the plaintiff independently "establish venue" with respect to the out-of-state tortfeasor would effectively prevent joinder of the out-of-state tortfeasor. This would be an absurd result, contrary to all established procedure.

Additionally, Crown's assertion that the statute's use of the word "claim" supports Crown's argument is not well-founded. *Black's Law Dictionary, Centennial Edition*, 6th Ed. 1990, defines the term "claim," *inter alia*, as "[a] cause of action." In *Barker v.*

Traders Bank, 152 W.Va. 774, 780, 166 S.E.2d 331, 335 (1969), this Court stated that "Rule 8(a), R.C.P., contemplates a succinct *complaint* containing a plain statement of *the* nature of *the claim* together with a demand for judgment." (Emphasis added). *Cf. Sticklen v. Kittle*, 168 W.Va. 147, 162, 287 S.E.2d 148, 156 (1981) (equating "claim" and "complaint").

There is certainly a sufficient overlap and identity between the ordinary meaning of the terms "claim," "civil action," and "cause of action," as they are used in *W.Va. Code*, 56-1-1 [2003] so as to weigh against finding that the use of the word "claim" in *W.Va. Code*, 56-1-1(c)[2003] establishes a novel rule that would fragment cases, foster piecemeal litigation, and radically alter settled procedures.

Additionally, Crown's suggestion that such a rule should be applied only to nonresidents runs headlong into the foregoing-discussed constitutional principles that strongly disfavor discrimination on the basis of residency in access to the courts. Application of these principles further weighs against such a reading of the statutory language.

For these reasons, this Court will not derive such an intent from the statute's use of the word "claim," nor enforce such a rule. Following our settled law, we hold that *W.Va. Code*, 56-1-1(c) [2003] does not require a nonresident plaintiff to separately establish venue for each defendant.

Based on this holding, the circuit court's dismissal of Crown as a defendant must be reversed.

IV.
Conclusion

The circuit court's dismissal of the plaintiff's claims against the appellants is reversed and this case is remanded.

Reversed and Remanded.