

# The Burger Court Opinion Writing Database

*Owen Equipment & Erection Co. v. Kroger*  
437 U.S. 365 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 13, 1978

Dear Potter:

Re: 77-677 Owen Equipment & Erection Co. v. Kroger

I join.

Regards,



Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 14, 1978

RE: No. 77-677 Owen Equipment, etc. v. Kroger

Dear Byron:

Please join me.

Sincerely,

*[Signature]*

Mr. Justice White  
cc: The Conference

*PS*  
*MM*  
*AM*

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

*24 MAY 1972*

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

No. 77-677, OWEN EQUIPMENT & ERECTION CO. v. KROGER

MR. JUSTICE STEWART delivered the opinion of the Court.

In an action in which federal jurisdiction is based on diversity of citizenship, may the plaintiff assert a claim against a third-party defendant when there is no independent basis for federal jurisdiction over that claim? The Court of Appeals for the Eighth Circuit held in this case that such a claim is within the ancillary jurisdiction of the federal courts. We granted certiorari, \_\_\_ U.S. \_\_\_, because this decision conflicts with several recent decisions of other Courts of Appeals.<sup>1/</sup>

I

On January 18, 1972, James Kroger was electrocuted when the boom of a steel crane next to which he was walking came too close to a high tension electric power line. The respondent (his widow, who is the administratrix of his estate) filed a wrongful death action in the United States District Court for the

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
~~Mr. Justice Marshall~~  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

SEE PAGE 239

From: Mr. Justice Stewart

Circulated.

Recirculated: 9 May 1970

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-677

Owen Equipment and Erection  
Company, Petitioner,  
v.  
Geraldine Kroger, Administratrix of  
the Estate of James D.  
Kroger, Deceased. } On Writ of Certiorari  
to the United States  
Court of Appeals for  
the Eighth Circuit.

[June —, 1978]

MR. JUSTICE STEWART delivered the opinion of the Court.

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T

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<sup>1</sup> *Favor v. Texaco, Inc.*, 546 F. 2d 636 (CA5); *Saalfrank v. O'Daniel*, 533 F. 2d 325 (CA6); *Parker v. W. W. Moore & Sons*, 528 F. 2d 764 (CA4); *Joseph v. Chrysler Corp.*, 513 F. 2d 626 (CA3), aff'd, 61 F. R. D. 347 (WD Pa.); *Kenrose Mfg. Co. v. Fred Whitaker Co.*, 512 F. 2d 890 (CA4).

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 9

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
✓Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

3rd DRAFT Recirculated: 15 JUN 1978

## SUPREME COURT OF THE UNITED STATES

No. 77-677

Owen Equipment and Erection  
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### I

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To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
 Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

2-6

From: Mr. Justice White

Circulated: 6/13

Recirculated:

## 1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-677

Owen Equipment and Erection Company, Petitioner,  
v.  
Geraldine Kroger, Administratrix of the Estate of James D. Kroger, Deceased. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1978]

MR. JUSTICE WHITE, dissenting.

The Court today states that “[i]t is not unreasonable to assume that, in generally requiring complete diversity, Congress did not intend to confine the jurisdiction of federal courts so inflexibly that they are unable . . . effectively to resolve an entire, logically entwined lawsuit.” *Ante*, at 11. In spite of this recognition, the majority goes on to hold that in diversity suits federal courts do not have the jurisdictional power to entertain a claim asserted by a plaintiff against a third-party defendant, no matter how entwined it is with the matter already before the court, unless there is an independent basis for jurisdiction over that claim. Because I find no support for such a requirement in either Art. III of the Constitution or in any statutory law, I dissent from the Court’s “unnecessarily grudging”<sup>1</sup> approach.

The plaintiff below, Mrs. Kroger, chose to bring her lawsuit against the Omaha Public Power District (OPPD) in federal district court. No one questions the power of the District Court to entertain this claim, for Mrs. Kroger at the time was a citizen of Iowa. OPPD was a citizen of Nebraska, and the amount in controversy was greater than \$10,000; jurisdiction

<sup>1</sup> See *Mine Workers v. Gibbs*, 383 U. S. 715, 725 (1966).

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 6-15-7

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
 No. 77-677  
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Owen Equipment and Erection  
 Company, Petitioner,  
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 Geraldine Kroger, Administratrix of  
 the Estate of James D.  
 Kroger, Deceased. } On Writ of Certiorari  
 to the United States  
 Court of Appeals for  
 the Eighth Circuit.

[June —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN |  
 joins, dissenting.

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<sup>1</sup>See *Mine Workers v. Gibbs*, 383 U. S. 715, 725 (1966).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

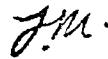
May 25, 1978

Re: No. 77-677 - Owen Equipment & Erection Co. v. Kroger

Dear Potter:

Please join me.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 26, 1978

Re: No. 77-677 - Owen Equipment v. Kroger

Dear Potter.

Please join me.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 29, 1978

No. 77-677 Owen Equipment Co. v. Kroger

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 25, 1978

Re: No. 77-677 - Owen Equipment & Erection Co. v. Kroger

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 25, 1978

Re: 77-677 - Owen Equipment v. Kroger

Dear Potter:

Please join me.

Respectfully,



Mr. Justice Stewart

Copies to the Conference