

The Burger Court Opinion Writing Database

Allstate Insurance Co. v. Hague

449 U.S. 302 (1981)

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

October 9, 1980

RE: 79-938 - Allstate Insurance v. Hague

MEMORANDUM TO THE CONFERENCE:

John's vote to affirm now takes this case out of any possibility of affirmance by an equally divided Court. Whether a 4/4 affirmance would be a "good" result in this area, is hard to say.

I agree with John's view that the present residence in Minnesota should not enter the result. But if the minimal contact with Minnesota by virtue of the decedent's working there is removed, what is left of the "contacts"?

John's memo suggests to me the desirability of a D.I.G. to let this tricky subject percolate. A "stray" Minnesota case will not make waves but - depending on how written - a holding of ours may do so.

I still lean to D.I.G. but if that continues to attract no support, I'll surrender. I cannot forget the Brandeis dictum that the most important thing we do is often what we decline to do, or words to that effect.

Regards,

WVZ

Brown 80

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

CHAMBERS OF
THE CHIEF JUSTICE

October 11, 1980

Re: No. 79-938, Allstate Ins. Co. v. Hague

Dear Bill,

I may wish to write separately in this case -- and perhaps even press my view that the best solution is DIG. Since I prefer to keep my options open, will you take over the assignment.

Regards,

A handwritten signature in black ink, appearing to be "WB", written in a cursive style.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

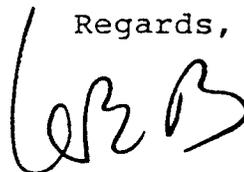
December 18, 1980

RE: 79-⁹³⁸~~983~~ - Allstate Insurance Co. v. Hague

Dear Lewis:

Please add my name to your dissent.

Regards,



Mr. Justice Powell

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

From: Mr. Justice Brennan

Circulated: ~~NOV 14 1980~~

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota,

[December —, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This Court granted certiorari to determine whether the Due Process Clause of the Fourteenth Amendment¹ or the Full Faith and Credit Clause of Art. 4, § 1,² of the United States Constitution bars the Minnesota Supreme Court's choice of substantive Minnesota law to govern the effect of a provision in an insurance policy issued to respondent's decedent. — U.S. — (1980).

I

Respondent's late husband, Ralph Hague, died of injuries suffered when a motorcycle on which he was a passenger was struck from behind by an automobile. The accident occurred in Pierce County, Wis., which is immediately across the Minnesota border from Red Wing, Minn. The operators of both vehicles were Wisconsin residents, as was the decedent who, at the time of the accident, resided with respondent in

¹ The Due Process Clause of the Fourteenth Amendment provides that no State "shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

² The Full Faith and Credit Clause, Art. IV, § 1, provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 19, 1980

RE: No. 79-938 Allstate Insurance Co. v. Hague

Dear Harry:

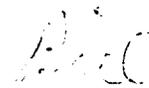
Thank you for your join in the above.

As to the use of the word "commute" as a noun, my authorities are Webster's New Collegiate Dictionary (Merriam-Webster 1974) which at page 228 defines "commute n: a trip made in commuting", and Barnhart's Dictionary of New English since 1963 at page 98 defines "commute n: a trip to and from work by a commuter."

I note that the word is not listed as a noun in my 1949 edition of Webster's Unabridged. I deduct from Barnhart's listing of it that this usage is fairly recent.

I would be quite willing to substitute a synonym but my Roget's doesn't suggest one nor can I find one in the cases listed in Words and Phrases.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

pp. 1, 13, 16, 17

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice

NOV 19 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota.

[December —, 1980]

^ JUSTICE BRENNAN delivered the opinion of the Court.

This Court granted certiorari to determine whether the Due Process Clause of the Fourteenth Amendment¹ or the Full Faith and Credit Clause of Art. 4, § 1,² of the United States Constitution bars the Minnesota Supreme Court's choice of substantive Minnesota law to govern the effect of a provision in an insurance policy issued to respondent's decedent. — U.S. — (1980).

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To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

From: Mr. Justice

Circuit Court

DEC 12 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota.

[December —, 1980]

JUSTICE BRENNAN delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 14, 1980

Re: No. 79-938, Allstate Insurance Co.
v. Hague

Dear Bill,

Please add the following at the foot of your
opinion for the Court in this case:

Justice Stewart took no part in the
consideration or decision of this
case.

Sincerely yours,



Justice Brennan

Copies to the Conference

P.S. Should not it be "Justice Brennan delivered
the opinion of the Court," not Mr. Justice Brennan?

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 17, 1980

Re: 79-938 - Allstate v. Hague

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 14, 1980

Re: No. 79-938 - Allstate Insurance Co. v. Hague

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 18, 1980

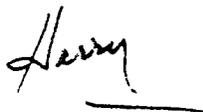
Re: No. 79-938 - Allstate Insurance Co. v. Hague

Dear Bill:

In a separate circulated note, I am joining your opinion.

As you may recall from the conference, I would have preferred to frame the result around the thought that the constitutional limits on choice of law are based in concepts of "fairness" and "federalism." In contrast, your opinion is to the effect that a State cannot constitutionally apply its own law unless it has a significant aggregation of contacts with the parties and the occurrence. This formula has much in common with my approach, but the two tests are not identical. Here, the only contact with the occurrence is that the decedent worked in Minnesota. I must concede that there is precedential support of the conclusion that a State must have contact with the transaction and the parties. See Clay v. Sun Insurance Office, Ltd., 377 U.S., at 183. I suspect, however, that this may be the focus of the anticipated dissent. We come out at the same point, of course, and I am content to join your approach for now. I do not intend to write separately.

Sincerely,



Mr. Justice Brennan



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 18, 1980

Re: No. 79-938 - Allstate Insurance Co. v. Hague

Dear Bill:

Please join me.

I must confess that the opinion's use of the word "commute" as a noun on pages 9, 11, 13, and 14, and perhaps elsewhere, jars my old-fashioned regard for traditional English. I do not find that word listed as a noun in any dictionary I have. Perhaps I am a long way behind the times. Could a better word be found?

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 20, 1980

Re: No. 79-938 - Allstate Insurance Co. Hague

Dear Bill:

Am I stubborn! None of the large Webster's Dictionaries I have found around the building contains the word "commute" as a noun, and some of these are more recent than your 1949 edition. Neither is it contained in the well-regarded Oxford English Dictionary, in either Fowler's, or for that matter, in Samuel Johnson's (7th ed., 1785).^x It is true that the word appears as a noun in the New Collegiate Dictionary. But that "authority" would confer respectability on all kinds of words and phrases. See, for example, "right on" on page 998, "groovy" on page 507, and "parameterize" on page 831 (page references are to the 1977 edition). I think this is the dictionary that in its advertisements prided itself as being "with-it" (see p. 1347).

The Oxford American Dictionary (2d printing, 1980) observes, p. 127: "commute n. (slang) a trip made in commuting, she has a long commute."

I just fear that the few genuine English teachers that are left across the Country will make fun of us. You probably cannot find a synonym in Roget's because it does not list the word as a noun in the first place. In my Roget's, there are a number of words that are usable, such as "journey" or "travel" or "trip" or "drive." I am not sure I know what "peregrination" means, but it is there, too.

I mentioned to you in the corridor the other day that the "folks" out in Hager City and Red Wing will be inclined to say, as usual, that "them Easterners don't know how to use the English langwitch."

Maybe, as some of us say on occasion, I should withdraw my joinder and "write separately."

Sincerely,

J.

^x/It is in Webster's supplement "6,000 Words," with a quote, p. 41, from good old Washington Post's Newsweek. I suppose that should make it correct.

Mr. Justice Brennan
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 17, 1980

79-938 Allstate Insurance Co. v. Hague

Dear Bill:

In due time, I plan to write a brief dissent - in
accord with my Conference vote.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

From: Mr. Justice Powell

11-28-80

Circulated: NOV 28 1980

1st DRAFT

Re-circulated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v,
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota.

[December —, 1980]

JUSTICE POWELL, dissenting.

My disagreement with the majority is narrow. I accept with few reservations Part II of the majority opinion, which sets forth the basic principles that guide us in reviewing state choice-of-law decisions under the Constitution. The Court should invalidate a forum State's decision to apply its own law only when there are no significant contacts between the State and the litigation. This modest check on state power is mandated by the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of Art. 4, § 1. I do not believe, however, that the Court adequately analyzes the policies such review must serve. In consequence, it has found significant what appear to me to be trivial contacts between the forum State and the litigation.

I

At least since *Carroll v. Lanza*, 349 U. S. 408 (1955), the Court has recognized that both the Due Process and the Full Faith and Credit Clauses are satisfied if the forum has such significant contacts with the litigation that it has a legitimate state interest in applying its own law. The significance of asserted contacts must be evaluated in light of the constitutional policies that oversight by this Court should serve. Two enduring policies emerge from our cases.

First, the contacts between the forum State and the litigation should not be so "slight and casual" that it would be funda-

136

Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Brandenburg
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Stevens

From: Mr. Justice Powell

12-3-80

Circulated: _____

2nd DRAFT

Recirculated: **DEC 3 1980**

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota.

[December —, 1980]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
dissenting.

My disagreement with the majority is narrow. I accept with few reservations Part II of the majority opinion, which sets forth the basic principles that guide us in reviewing state choice-of-law decisions under the Constitution. The Court should invalidate a forum State's decision to apply its own law only when there are no significant contacts between the State and the litigation. This modest check on state power is mandated by the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of Art. 4, § 1. I do not believe, however, that the Court adequately analyzes the policies such review must serve. In consequence, it has found significant what appear to me to be trivial contacts between the forum State and the litigation.

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First, the contacts between the forum State and the litigation

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1, 8

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

12-29-80

From: Mr. Justice Powell

3rd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Revised/Re-circulated: DEC 29 1980

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota.

[December —, 1980]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, dissenting.

My disagreement with the majority is narrow. I accept with few reservations Part II of the majority opinion, which sets forth the basic principles that guide us in reviewing state choice-of-law decisions under the Constitution. The Court should invalidate a forum State's decision to apply its own law only when there are no significant contacts between the State and the litigation. This modest check on state power is mandated by the Due Process Clause of the Fourteenth Amendment and the Full Faith and Credit Clause of Art. 4, § 1. I do not believe, however, that the Court adequately analyzes the policies such review must serve. In consequence, it has found significant what appear to me to be trivial contacts between the forum State and the litigation.

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First, the contacts between the forum State and the litigation

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

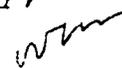
December 2, 1980

Re: No. 79-938 Allstate Insurance Co. v. Hague

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,



Mr. Justice Powell

Copies to the Conference

①
Rehnquist

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 9, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-938 - Allstate Insurance v. Hague

After further reflection on our Conference discussion, I am now prepared to vote to affirm. I will try to summarize my thinking.

First, there seems to be a consensus that Minnesota has not refused to give full faith and credit to any public act, record, or judicial proceeding of Wisconsin. These specific insurance policies were not construed by any Wisconsin court, and there seems to have been no unambiguous construction of Wisconsin law that the parties could be presumed to have accepted when the policies were issued. The issue therefore is whether the Due Process Clause was violated by Minnesota's decision to apply its own "stacking" rule to these policies.

If the issue is a matter of fundamental fairness, the answer must depend in part on the character of the rule that Minnesota seeks to apply and also in part on whether that application is even-handed. Looking first to fairness, I think it is significant that (a) the rule is not peculiar to Minnesota but rather is probably followed in most jurisdictions; (b) as a matter of economics it is reasonable to conclude that extra coverage should be afforded when additional premiums are paid; and (c) there is no basis for concluding--as there was in the Home Insurance case--that the clear expectations of the parties will be frustrated.

If Minnesota's rule is to be applied in an even-handed manner, it should not produce a more favorable result for the plaintiff simply because the plaintiff resides in Minnesota when the action is commenced. Residence at the time the contract was made, or at the time of the accident, may well affect the choice of law, but I could not agree with an analysis that allowed Minnesota to base its choice

● Brewer EU

of substantive rules of law on the residence of the plaintiff at the time the litigation begins. This means that, as I presently view the case, I could not join an opinion that affirms on the basis of respondent's post accident move to Minnesota. (I also doubt the relevance of the fact that the decedent was a Minnesota commuter, but I am not at rest on this point.)

In sum, although I am convinced that the Constitution does place limits on a state court's power to choose to apply its own law to transactions that arose elsewhere, I do not believe those limits were exceeded in this case.

Respectfully,

A handwritten signature in cursive script, appearing to be 'J. H.', is written below the word 'Respectfully,'.

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

From: Mr. Justice Stevens

Circulated: DEC 22 '80

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
Supreme Court of Minnesota.

[January —, 1981]

JUSTICE STEVENS, concurring in the judgment.

As I view this unusual case—in which neither precedent nor constitutional language provides sure guidance—two separate questions must be answered. First, does the Full Faith and Credit Clause¹ require Minnesota, the forum State, to apply Wisconsin law? Second, does the Due Process Clause² of the Fourteenth Amendment prevent Minnesota from applying its own law? The first inquiry implicates the federal interest in ensuring that Minnesota respect the sovereignty of the State of Wisconsin; the second implicates the litigants' interest in a fair adjudication of their rights.³

¹ Article IV, § 1 provides:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U. S. Const., Art. IV, § 1.

² Section 1 of the Fourteenth Amendment provides, in part:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." U. S. Const., Amdt. XIV, § 1

³ The two questions presented by the choice-of-law issue arise only after it is assumed or established that the defendant's contacts with the forum State are sufficient to support personal jurisdiction. Although the choice-of-law concerns—respect for another sovereign and fairness to the litigants—are similar to the two functions performed by the jurisdictional

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

Pp. 3, 5, 6, 8-13

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JAN 6 '81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-938

Allstate Insurance Company,
Petitioner,
v.
Lavina Hague, etc. } On Writ of Certiorari to the
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[January —, 1981]

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