

456 U.S. 694, 72 L.Ed.2d 492

**INSURANCE CORP. OF IRELAND,  
LTD. et al., Petitioners,**

v.

**COMPAGNIE des BAUXITES  
de GUINEE.**

No. 81-440.

Argued March 23, 1982.

Decided June 1, 1982.

Defendants appealed from judgment of the district court which imposed sanction of deeming jurisdictional fact established for purpose of exercise of personal jurisdiction over defendant. The Court of Appeals for the Third Circuit, 651 F.2d 877, affirmed in part and reversed in part and certiorari was granted. The Supreme Court, Justice White, held that the sanction of regarding certain facts as established may be imposed with respect to failure to comply with discovery orders related to attempts to establish the facts relevant to the exercise of personal jurisdiction.

Affirmed.

Justice Powell filed an opinion concurring in the judgment.

**1. Constitutional Law** ⇨305(4)

Sanction of taking certain facts as established may be applied to support a finding of personal jurisdiction over the defendant without violating the due process clause. Fed.Rules Civ.Proc. Rule 37(b)(2), 28 U.S.C.A.; U.S.C.A.Const.Amend. 5.

**2. Federal Courts** ⇨3

Validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties.

**3. Federal Courts** ⇨5

Subject matter jurisdiction is an Article III as well as a statutory, requirement; it functions as a restriction on federal power. U.S.C.A.Const.Art. 3, § 2, cl. 1.

**4. Federal Courts** ⇨31

No action of the parties can confer subject matter jurisdiction upon a federal court. U.S.C.A.Const.Art. 3, § 2, cl. 1.

**5. Judgment** ⇨713(1)

Party which has had an opportunity to litigate the question of subject matter jurisdiction may not reopen that question in a collateral attack upon adverse judgment; principles of res judicata apply to jurisdictional determinations both with respect to subject matter jurisdiction and with respect to personal jurisdiction.

**6. Federal Courts** ⇨3

Requirement that a court have personal jurisdiction flows from the due process clause, not from Article III. U.S.C.A. Const.Art. 3, § 2, cl. 1; Amend. 5.

**7. Courts** ⇨37(1)

Requirement of personal jurisdiction can be waived. U.S.C.A.Const.Amend. 5.

**8. Federal Civil Procedure** ⇨1278

Proper application of rule permitting certain facts to be deemed established if a party does not comply with discovery orders will support a presumption that the failure to produce the requested evidence is due to a want of merit in the claim of lack of jurisdiction. Fed.Rules Civ.Proc. Rule 37(b)(2), 28 U.S.C.A.

**9. Judgment** ⇨713(1)

By submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, defendant agrees to abide by that court's determination on the issue of jurisdiction and that decision will be res judicata on that issue in any further proceeding.

**10. Federal Civil Procedure** ⇨1278

In view of defendants' failure to provide requested material relating to issue of personal jurisdiction despite repeated orders from the court to do so, in view of the court's prior warning of imposition of sanction, in view of fact that defendants repeatedly agreed to comply with discovery orders within specified time periods but

then failed to do so, and in view of fact that claim of personal jurisdiction was not frivolous, court properly imposed sanction of taking the jurisdictional facts as established. Fed.Rules Civ.Proc. Rule 37(b)(2), 28 U.S.C.A.

*Syllabus* \*

Federal Rule of Civil Procedure 37(b)(2)(A) provides that a district court, as a sanction for failure to comply with discovery orders, may enter "[a]n order that the matters regarding which the [discovery] order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." Asserting diversity jurisdiction, respondent, a Delaware corporation with its principal place of business in the Republic of Guinea, filed suit against various insurance companies in the United States District Court for the Western District of Pennsylvania to recover on a business interruption policy. When certain of the defendants (a group of foreign insurance companies, including petitioners) raised the defense of lack of personal jurisdiction, respondent attempted to use discovery in order to establish jurisdictional facts. After petitioners repeatedly failed to comply with the court's orders for production of the requested information, the court warned them that unless they complied by a specified date, it would assume, pursuant to Rule 37(b)(2)(A), that it had personal jurisdiction. When petitioners again failed to comply, the court imposed the sanction, and the Court of Appeals affirmed, concluding that imposition of the sanction fell within the trial court's discretion under Rule 37(b)(2)(A) and that the sanction did not violate petitioners' due process rights.

*Held:*

1. Rule 37(b)(2)(A) may be applied to support a finding of personal jurisdiction without violating due process. Unlike subject-matter jurisdiction, which is an Art. III as well as a statutory requirement, the

requirement that a court have personal jurisdiction flows from the Due Process Clause and protects an individual liberty interest. Because it protects an individual interest, it may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue. Due process is violated by a rule establishing legal consequences of a failure to produce evidence only if the defendant's behavior will not support the presumption that "the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351, 29 S.Ct. 370, 380, 53 L.Ed. 530. A proper application of Rule 37(b)(2)(A) will, as a matter of law, support such a presumption. Pp. 2103-2107. 1695

2. The District Court did not abuse its discretion in applying Rule 37(b)(2)(A) in this case. The record establishes that imposition of the sanction here satisfied the Rule's requirements that the sanction be both "just" and specifically related to the particular "claim" that was at issue in the discovery order. Pp. 2107-2108.

651 F.2d 877, affirmed.

Edmund K. Trent, Pittsburgh, Pa., for petitioners.

Cloyd R. Mellott, Pittsburgh, Pa., for respondent.

Justice WHITE delivered the opinion of the Court.

Rule 37(b), Federal Rules of Civil Procedure, provides that a district court may impose sanctions for failure to comply with discovery orders. Included among the available sanctions is:

"An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." Rule 37(b)(2)(A).

reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the

Federal courts are courts of limited jurisdiction. The character of the controversies over which federal judicial authority may extend are delineated in Art. III, § 2, cl. 1. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction. Again, this reflects the constitutional source of federal judicial power: Apart <sup>1702</sup> from this Court, that power only exists "in such inferior Courts as the Congress may from time to time ordain and establish." Art. III, § 1.

[3-5] Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant, *California v. LaRue*, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972), principles of estoppel do not apply, *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17-18, 71 S.Ct. 534, 541-542, 95 L.Ed. 702 (1951), and a party does not waive the requirement by failing to chal-

9. A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not, however, reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of res judicata apply to jurisdictional determinations—both subject matter and personal. See *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 60 S.Ct. 317, 84 L.Ed. 329 (1940); *Stoll v. Gottlieb*, 305 U.S. 165, 59 S.Ct. 134, 83 L.Ed. 104 (1938).

10. It is true that we have stated that the requirement of personal jurisdiction, as applied to state courts, reflects an element of federalism and the character of state sovereignty vis-à-vis other States. For example, in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-292, 100 S.Ct. 559, 564, 62 L.Ed.2d 490 (1980), we stated:

"[A] state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum.

It also protects the defendant against challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. "[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510, 511, 28 L.Ed. 462 (1884).<sup>9</sup>

[6] None of this is true with respect to personal jurisdiction. The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.<sup>10</sup> Thus, the test for personal jurisdiction requires that "the maintenance of the suit . . . not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Wash-*

And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." (Citation omitted.)

Contrary to the suggestion of Justice POWELL, *post*, at 2110, our holding today does not alter the requirement that there be "minimum contacts" between the nonresident defendant and the forum State. Rather, our holding deals with how the facts needed to show those "minimum contacts" can be established when a defendant fails to comply with court-ordered discovery. The restriction on state sovereign power described in *World-Wide Volkswagen Corp.*, however, must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns. Furthermore, if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waive the personal jurisdiction requirement: Individual actions cannot change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected.

<sup>1703</sup>

ington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 342, 85 L.Ed. 278 (1940).

[7] Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived. In *McDonald v. Mabee*, *supra*, the Court indicated that regardless of the power of the State to serve process, an individual may submit to the jurisdiction of the court by appearance. A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court. In *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316, 84 S.Ct. 411, 414, 11 L.Ed.2d 354 (1964), we stated that "parties to a contract may agree in advance to submit to the jurisdiction of a given court," and in *Petrowski v. Hawkeye-Security Co.*, 350 U.S. 495, 76 S.Ct. 490, 100 L.Ed. 639 (1956), the Court upheld the personal jurisdiction of a District Court on the basis of a stipulation entered into by the defendant. In addition, lower federal courts have found such consent implicit in agreements to arbitrate. See *Victory Transport Inc. v. Comisaria General de Abastecimientos y Transportes*, 336 F.2d 354 (CA2 1964); 2 J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 4.02[3], n. 22 (1982) and cases listed there. Furthermore, the Court has upheld state procedures which find constructive consent to the personal jurisdiction of the state court in the voluntary use of certain state procedures. See *Adam v. Saenger*, 303 U.S. 59, 67-68, 58 S.Ct. 454, 458, 82 L.Ed. 649 (1938) ("There is nothing in the Fourteenth Amendment to prevent a state from adopting a procedure by which a judgment *in personam* may be rendered in a cross-action against a plaintiff in its courts . . . It is the price which the state may exact as the condition of opening its courts to the plaintiff"); *Chicago Life Ins. Co. v. Cherry*, 244 U.S. 25, 29-30, 37 S.Ct. 492, 493, 61 L.Ed. 966 (1917) ("[W]hat acts of the defendant shall be deemed a submission to [a court's] power is a matter upon

which States may differ"). Finally, unlike subject-matter jurisdiction, which even an appellate court may review *sua sponte*, under Rule 12(h), Federal Rules of Civil Procedure, "[a] defense of lack of jurisdiction over the person . . . is waived" if not timely raised in the answer or a responsive pleading.

In sum, the requirement of personal jurisdiction may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue. These characteristics portray it for what it is—a legal right protecting the individual. The plaintiff's demonstration of certain historical facts may make clear to the court that it has personal jurisdiction over the defendant as a matter of law—i.e., certain factual showings will have legal consequences—but this is not the only way in which the personal jurisdiction of the court may arise. The actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not.

The expression of legal rights is often subject to certain procedural rules: The failure to follow those rules may well result in a curtailment of the rights. Thus, the failure to enter a timely objection to personal jurisdiction constitutes, under Rule 12(h)(1), a waiver of the objection. A sanction under Rule 37(b)(2)(A) consisting of a finding of personal jurisdiction has precisely the same effect. As a general proposition, the Rule 37 sanction applied to a finding of personal jurisdiction creates no more of a due process problem than the Rule 12 waiver. Although "a court cannot conclude all persons interested by its mere assertion of its own power," *Chicago Life Ins. Co. v. Cherry*, *supra*, at 29, 37 S.Ct., at 493, not all rules that establish legal consequences to a party's own behavior are "mere assertions" of power.

Rule 37(b)(2)(A) itself embodies the standard established in *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 29 S.Ct. 370, 53 L.Ed. 530 (1909), for the due process limits on such rules.<sup>11</sup> There the Court held that

rule find support in [*Hammond Packing Co. v. Arkansas*, 212 U.S. 322 [29 S.Ct. 370, 53 L.Ed.

11. The Advisory Committee Notes to the Rule specifically stated that "the provisions of the