

June 30, 2011

Supreme Court Rejects Expansive Approaches to Exercising Personal Jurisdiction Over Out-of-State Companies Based on “Stream of Commerce” Theory

On June 27, 2011, in a pair of decisions issued on the final day of its term, the United States Supreme Court rejected a broad application of the “stream of commerce” theory of personal jurisdiction, under which a manufacturer of goods would be subject to personal jurisdiction in any state where its goods are used or purchased by a consumer or other end-user. *J. McIntyre Machinery, Ltd. v. Nicastro*, No. 09-1343; *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76. These decisions clarify and reaffirm that out-of-state and non-U.S. companies (including out-of-state and non-U.S. subsidiaries of U.S. companies) are unlikely to be subject to a state’s personal jurisdiction in such circumstances without having something more than just sporadic or limited contacts with that state.

McIntyre Machinery overturned a decision of the Supreme Court of New Jersey finding “specific jurisdiction” over a British manufacturer of industrial equipment that allegedly caused a workplace injury in New Jersey. *Goodyear* reversed a decision of the North Carolina Court of Appeals finding “general jurisdiction” in North Carolina over a U.S. corporation’s foreign subsidiaries whose products allegedly caused an automobile accident outside Paris, France. In both cases, the U.S. Supreme Court confronted the significance of placing goods into the “stream of commerce,” from which they ultimately reached a destination where an injury occurred.

McIntyre Machinery

McIntyre Machinery involved product liability claims against the English manufacturer of a metal-shearing machine, brought by a plaintiff who had injured his hand while using one of the defendant manufacturer’s machines. The manufacturer had sold its machines to an independent U.S. distributor, and up to four of those machines ultimately ended up in New Jersey. While representatives of that manufacturer had attended a number of conventions and trade shows in the United States, none of them were in New Jersey.

The New Jersey Supreme Court held that because the plaintiff’s injury occurred in New Jersey and the manufacturer knew or should have known “that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states,” but failed to take reasonable steps to prevent its products from being sold in New Jersey, personal jurisdiction over the English manufacturer in New Jersey was proper. The New Jersey Supreme Court predicated its holding on a “stream-of-commerce theory of jurisdiction,” under which “a foreign manufacturer that places a defective product in the stream of commerce through a distribution scheme that targets a national market, which includes New Jersey,” is subject to New Jersey jurisdiction if the product causes injury in New Jersey.

The Supreme Court reversed by a 6-3 vote, holding that personal jurisdiction was improper in these circumstances. However, there was no single majority opinion. Four Justices joined in a plurality opinion, while two others delivered a separate opinion concurring in the result on a narrower basis than that expressed by the four-justice plurality. As the opinion necessary to the Court's result and resting on the most limited grounds, this latter opinion, written by Justice Breyer, is likely to be treated as the controlling rationale of the case by lower courts.

The plurality opinion, written by Justice Kennedy, noted that a set of divided opinions in an earlier Supreme Court case, *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), had left unclear whether personal jurisdiction can be predicated on a "stream-of-commerce" theory where there is no showing that a defendant has purposefully availed itself of the benefits of the laws of the state in question, *i.e.*, "engag[ing] in activities that reveal an intent to invoke or benefit from the protection of its laws." Determined to now answer this question, the plurality opinion responded in the negative, concluding that a defendant's transmission of goods into the stream of commerce "permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State."

Thus, because the English manufacturer had no offices in New Jersey, owned no property there, sent no employees there, did not advertise there, and had no contacts with New Jersey other than that the machine in question had ended up there, the four Justices in the plurality found that there was no showing that the company "purposefully availed itself of the New Jersey market," and thus no basis for New Jersey to exercise personal jurisdiction over that English manufacturer.

Responding directly to some of the theories that had been discussed but ultimately left unresolved in the 1987 *Asahi* case, the plurality Justices rejected the concept that personal jurisdiction questions should be resolved primarily by reference to "considerations of fairness and foreseeability." Rather, they said, the touchstone of personal jurisdiction analysis should be what they termed "the central concept of sovereign authority," under which it is a defendant's purposeful submission to a forum state's jurisdiction that forms the basis for the forum state's "lawful power" within constitutional due process requirements to render judgment against the defendant.

Justice Breyer's opinion, by contrast, took a more cautious approach. His opinion took the view that straightforward application of earlier Supreme Court precedents was sufficient to resolve the personal jurisdiction question before the Court, without having to issue a broad rule that tackled the issues left unresolved in *Asahi*. Justice Breyer noted that both of the plurality opinions in *Asahi* required more than isolated or occasional sales of products in the forum state. Even under the expansive plurality opinion in *Asahi* written by Justice Brennan, to find personal jurisdiction still required that the sales at least be a part of a "regular flow" or "regular course" of sales in the forum state. And under the narrower plurality opinion in *Asahi* written by Justice O'Connor, to find personal jurisdiction required "something more" than simply placing a product into the "stream of commerce," such as "special state related design, advertising, advice, [or] marketing."

Justice Breyer accordingly rejected the New Jersey Supreme Court's "absolute approach" resting on the distribution of products through a "system that *might* lead to those products being sold" in New Jersey, noting that the Supreme Court "has rejected the notion that the defendant's amenability to suit travels with the chattel," *i.e.*, travels with the goods sold by the defendant. He further noted that the defendant's status as a non-U.S.-based manufacturer raised concerns about "the basic fairness of [the New Jersey Supreme Court's] absolute rule."

Where Justice Breyer took issue with the plurality was in regard to what he characterized as the plurality's "strict rules that would limit jurisdiction where a defendant does not intend to submit to the power of a sovereign," taking the view that *McIntyre Machinery* was an unsuitable "vehicle for making

broad pronouncements that refashion basic jurisdictional rules.” In particular, he expressed concern about the many factual permutations possible in a world of electronic and Internet commerce, noting that the jurisdictional issues that could arise in such settings would involve “serious commercial consequences [that] are totally absent in this case.” Justice Breyer thus suggested that the Court leave the issues implicated by the plurality’s more categorical approach to be addressed in a more appropriate case arising at a future time.

Goodyear

In contrast to the divided *McIntyre Machinery* decision, the Court was unanimous in rejecting the state court’s exercise of personal jurisdiction in *Goodyear*, a case presenting issues significantly more straightforward than those at issue in *McIntyre Machinery*. *Goodyear* clarified that even where a defendant’s sales of goods that reach the forum state might be sufficient to provide “specific” personal jurisdiction, *i.e.*, personal jurisdiction over a claim arising from an injury in that state related to those very goods, such a sale of goods, without more, was still insufficient to subject that defendant to the “general” jurisdiction of the state’s courts, *e.g.*, jurisdiction with regard to all disputes, whether or not related to the defendant’s activities in, or affecting, the forum state.

Goodyear involved claims arising from a 2004 bus accident outside of Paris, in which two 13-year-old soccer players from North Carolina had died. The athletes’ parents sued various parties, including several foreign subsidiaries of Goodyear USA, asserting that tires made, designed and distributed by the subsidiaries were defective and had caused the crash. The tires in questions were made in Turkey, and were sold and used in Europe.

While the U.S. parent, Goodyear USA, did not contest personal jurisdiction in North Carolina, its foreign subsidiaries did. The North Carolina Supreme Court held that the foreign subsidiaries were subject to North Carolina jurisdiction because some of the tires made abroad by those foreign subsidiaries — though not the tires actually involved in this particular crash — “had reached North Carolina through the ‘stream of commerce.’”

The U.S. Supreme Court reversed. What the North Carolina Court of Appeals had done, it said, was to improperly conflate the test for “general” jurisdiction with the test for “specific” jurisdiction. The Supreme Court reaffirmed that the “paradigm” bases for exercising “general” jurisdiction over a corporation are when the corporation is domiciled or incorporated in the forum state or has its principal place of business there. Out-of-state defendants can also be subject to “general” jurisdiction in a state on a so-called “presence” or “doing business” rationale if their contacts with that state are “continuous and systematic” in nature, a demanding requirement. But mere marketing or sales of products that reach the forum state, the Court held, will generally be held insufficient to support an exercise of “general” jurisdiction over that defendant, *e.g.*, as to claims that do not themselves arise from the marketing or sale of the defendant’s products in the forum state.

The consequence of the “sprawling view of general jurisdiction” that had been embraced by the court below, said the Supreme Court, would be that “any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.” The Supreme Court held that such a result was incompatible with the Court’s long-standing due process jurisprudence setting the limits on when states can exercise personal jurisdiction over out-of-state defendants.

Implications of the Court’s Decisions

Taken together, *McIntyre Machinery* and *Goodyear* represent a one-two punch of rejection for the efforts by some state courts to advance expansive theories of personal jurisdiction based on the “stream of commerce” language used in Justice Brennan’s plurality opinion in *Asahi* 24 years ago. These latest personal jurisdiction decisions by the Supreme Court reaffirm that mere occasional and sporadic sales of

products that somehow reach a particular state will not ordinarily be sufficient to support personal jurisdiction in that state over the manufacturer of the products. Moreover, these decisions make clear that where the plaintiff's claim is not directly related to a defendant's sales of products in the forum state, so as to provide a basis for exercising "specific" jurisdiction over the defendant, it will ordinarily be very difficult, if not impossible, for the plaintiff to establish "general" jurisdiction over the defendant in the forum state if based solely upon such sales.

While the Court thus rejected efforts by some courts to expand the boundaries of personal jurisdiction, the Court's opinions should not be taken as a sea change in the law of personal jurisdiction. Moreover, even with the clarifications these opinions provide, a number of questions still remain open.

For example, the Court's opinions do not offer clear guidance regarding what level of sales that reach a particular state should be deemed "occasional or sporadic," or even on what the relevant metric is for measuring such level (*e.g.*, should it be based on frequency of sales, unit volumes of sales, dollar volumes of sales, etc.), and whether that metric should be evaluated differently depending on the method of delivery or distribution. In addition, because *McIntyre Machinery* involved indirect sales through an independent distributor, that decision therefore may not provide reliable guidance as to situations where a defendant has made at least some sales directly in or into the state where the litigation was filed. Moreover, under the Court's analysis, if the defendant has deliberately targeted its marketing or sales efforts towards a particular state, it is uncertain whether a limited volume of sales may support personal jurisdiction there. Finally, as Justice Breyer's opinion in *McIntyre Machinery* suggests, the application of these principles is less clear and certainly not well settled in the context of Internet and electronic sales, such as when a defendant manufacturer's goods are made available in all 50 states equally through websites like Amazon.com. The Supreme Court and the lower courts will likely continue to refine the application of personal jurisdiction rules to lawsuits arising from such transactions.

In light of *McIntyre Machinery* and *Goodyear*, international companies may be able to reduce their risk of being subjected to the jurisdiction of unfamiliar U.S. state court systems by reviewing and possibly modifying their U.S. marketing and distribution practices. At least outside the e-commerce realm, to the extent that foreign-manufactured products are marketed through independent, nationwide or regional distributors, and the foreign manufacturer avoids advertising or marketing activities that target specific U.S. states, the manufacturer's risk of becoming subject to jurisdiction in an unexpected locale may be reduced as a result of these two decisions.

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