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Supreme Court Limits Jurisdiction Over Foreign Manufacturers

The US Supreme Court has overturned two state court rulings regarding the standard for subjecting a foreign manufacturer to personal jurisdiction in US courts in product liability cases. In both cases, the state courts held that they could exercise jurisdiction over a foreign manufacturer because the manufacturer placed its products in the "stream of commerce" and knew or reasonably should have known that its products would end up in the state. The Supreme Court reversed both decisions, concluding that such an exercise of jurisdiction was inconsistent with the Due Process Clause of the Fourteenth Amendment.

These cases have broad implications for non-US manufacturers whose products are sold in the US. Although the Court did not muster a majority for any single jurisdictional test, a majority of the Court rejected the proposition that merely placing a product into the stream of commerce provides jurisdiction in every state. Absent a showing that a manufacturer targeted a particular state's market, it will now be more difficult for product liability plaintiffs to assert jurisdiction over that manufacturer in any particular state.

Personal Jurisdiction: An Overview

To exercise authority over a defendant, US federal and state courts must have personal jurisdiction over that defendant. Personal jurisdiction over an out-of-state defendant must satisfy the minimum constitutional requirement that defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). This requirement protects potential defendants from being forced to defend lawsuits in unforeseeable and unfamiliar jurisdictions. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). The US Supreme Court has specifically warned lower courts to exhibit "great care and reserve" in determining whether they may exercise jurisdiction over a defendant that is not physically present in the US. *Asahi Metal Indus. Co., v. Superior Ct. of Cal.*, 480 U.S. 102, 115 (1987).

The US Supreme Court has distinguished between general and specific jurisdiction. "General jurisdiction" exists for any and all claims if the defendant has continuous, substantial, and systematic contacts with the jurisdiction (such as maintaining an office in the state or actively conducting business in the state). A court may exercise "specific jurisdiction" in cases that relate to a defendant's contacts with the forum state (for example, a lawsuit over an automobile accident that occurs when the defendant is driving in the state). *Int'l Shoe Co.*, 326 U.S. at 317-18. If the defendant lacks "minimum contacts" with the state, the court cannot exercise jurisdiction at all. *Id.* at 318.

Each state has identified the specific circumstances in which the state's courts can assert personal jurisdiction through so-called "long-arm" statutes. Although some states require a more significant nexus between an out-of-state defendant's contacts with the state and the disputed conduct, most

Key Issues

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"Stream of Commerce" Jurisdiction

The US Supreme Court Takes Two "Stream of Commerce" Cases

Implications

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states' long-arm statutes simply provide that courts may assert personal jurisdiction to the full extent allowable under the Due Process Clause of the US Constitution – meaning the standards articulated by the US Supreme Court.

"Stream of Commerce" Jurisdiction

The US courts have long grappled with when a court can exercise jurisdiction over a nonresident manufacturer that has placed a product in the "stream of commerce" that eventually causes an injury in the state. This has created significant uncertainty for courts and litigants, and commentators have been anxious for further guidance.

The uncertainty stems in large part from a 1987 decision in which the US Supreme Court split into two factions on the issue, neither of which commanded a majority: *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102 (1987). Two four-Justice pluralities disagreed as to whether a state court's ability to exercise personal jurisdiction over an out-of-state defendant required merely that a lawsuit in that state be foreseeable, or something more than foreseeability. Justice Brennan's plurality opinion embraced foreseeability and concluded that it was sufficient that a defendant knew that the product, once placed in the "stream of commerce," would likely enter the forum state. *Id.* at 117. Justice O'Connor's plurality opinion required more, asserting that the "substantial connection" between an out-of-state defendant and the forum state necessary for personal jurisdiction should require "an action by the defendant purposefully directed toward the forum State." *Id.* at 112.

In the years since *Asahi*, some lower courts have followed Justice Brennan's analysis, while others have followed Justice O'Connor's analysis. As a result, confusion and inconsistency in rulings has plagued the lower courts and litigants.

The US Supreme Court Holds That There Is No Personal Jurisdiction In Two "Stream of Commerce" Cases

The US Supreme Court recently issued decisions in two cases that help to resolve the uncertainty that *Asahi* created.

In those cases, *Nicastro v. McIntyre Machinery America, Ltd.*, 987 A.2d 575 (N.J. 2010), and *Brown v. Meter ("Goodyear Luxembourg")*, 681 S.E.2d 382 (N.C. Ct. App. 2009), state courts in New Jersey and North Carolina expanded the scope of their jurisdiction beyond what the US Supreme Court had previously allowed. Both courts held that foreign manufacturers were subject to personal jurisdiction merely by placing a product in the "stream of commerce" that eventually injured a resident of the forum state, without regard to whether it was foreseeable that the product would end up in the state.

In two decisions issued at the close of this year's term, the Supreme Court reversed both the *McIntyre* and *Goodyear Luxembourg* courts, holding that the exercise of personal jurisdiction over the foreign manufacturers violated the Due Process Clause.

The first decision was straightforward and unanimous. *Goodyear Luxembourg* arose out of a 2004 bus accident in France that killed two residents of North Carolina. The victims' estates brought suit in North Carolina against Goodyear Tire & Rubber Company's affiliates from Luxembourg, Turkey, and France. The defendants moved to dismiss the case for lack of personal jurisdiction because they had no physical presence in North Carolina and made no efforts to market their products to consumers in North Carolina.

The trial court denied the motion to dismiss, and the decision was upheld on appeal. The trial and appellate courts both held that the entities were subject to *general* jurisdiction in North Carolina—that is, they were potentially liable for any and all claims even if those claims are unrelated to their limited contacts with the state—merely because the defendants "knew or should have known that a Goodyear affiliate obtained tires manufactured by [the defendants] and sold them in the United States," which "eventually found their way into North Carolina markets" through the "stream of commerce."

In a unanimous opinion authored by Justice Ginsburg, the Supreme Court reversed, reaffirming the distinction between general and specific jurisdiction. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76, 2011 WL 2518815 (U.S. June 27, 2011). While "[a] court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State," "[s]pecific jurisdiction ... depends on an 'affiliatio[n]' between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* at 2. "In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Id.*

According to the Court, the facts of the case were plainly insufficient to establish general jurisdiction, because they failed to establish the "'continuous and systematic' affiliation necessary to empower North Carolina courts to entertain claims

unrelated to the foreign corporation's contacts with the State." *Id.* at 3. The Court did not address the question whether the facts alleged satisfied specific jurisdiction, as the lower courts had already determined that they did not. *Id.* at 10.

In the second case, issued the same day, a divided Court ruled that allegations that an out-of-state defendant's product entered the stream of commerce were insufficient to establish specific jurisdiction. In *McIntyre*, an employee of a New Jersey scrap metal company was injured in 2001 while using a shear machine. J. McIntyre, a UK company with no contacts with New Jersey, manufactured the machine in 1995. J. McIntyre sold this machine to an independent distributor in Ohio, and the distributor then sold the machine to the New Jersey company. The trial court dismissed the case for lack of personal jurisdiction, but the New Jersey Supreme Court reversed on appeal.

The New Jersey Supreme Court held that J. McIntyre could be sued in New Jersey simply because it "targeted the United States economy for the sale of its products," and thus knew or should have known that the shear machine might eventually reach consumers in New Jersey. The court relied on "the radical transformation of the international economy" to conclude that it was foreseeable that J. McIntyre's machine, once entering the stream of commerce, eventually would enter New Jersey.

The US Supreme Court reversed. Four Justices—in a plurality opinion by Justice Kennedy joined by Chief Justice Roberts, Justice Scalia, and Justice Thomas—signaled their profound discomfort with the "stream of commerce" theory of personal jurisdiction. This plurality wrote that it is a defendant's "purposeful availment" of the privileges of conducting activities within the forum state that makes jurisdiction consistent with the Due Process Clause's requirements of "fair play and substantial justice," and that merely placing a product in the "stream-of-commerce" does not satisfy that standard. See *J. McIntyre Machines Ltd. v. Nicastro*, No. 09-1343, 2011 WL 2518811, slip op. at 2 (U.S. June 27, 2011). In determining jurisdiction, the plurality stated that "[t]he question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *Id.* at 8-9, 11.

Justice Breyer, with whom Justice Alito joined, concurred only in the judgment. *Id.* at 4 (Breyer, J., dissenting). Justice Breyer agreed that jurisdiction had not been demonstrated in this case based on application of the Court's precedents (because the record showed only a single sale of the product in New Jersey). He declined in this case to adopt a stricter test, however, out of concern for unknown consequences in cases involving contemporary commercial circumstances such as internet commerce. But he also rejected the mere "stream of commerce" test out of concern for fairness to defendants. *Id.*

Justice Ginsburg's dissent, with whom Justice Sotomayor and Justice Kagan joined, emphasized that the UK company sold its products to an independent US distributor. Justice Ginsburg, quoting a law review article, criticized the plurality for "turn[ing] the clock back to the days before modern long-arm statutes when a manufacturer, to avoid being haled into court where a user is injured, need only Pilate-like wash its hands of a product by having independent distributors market it." *Id.* at 1-2 (Ginsburg, J., dissenting).

Implications

The Supreme Court's decisions in *McIntyre* and *Goodyear*, the first two decisions on personal jurisdiction in two decades, to a certain extent clarify the confusion resulting from *Asahi*, affirming that foreign manufacturers cannot be sued in state court unless their conduct has a link to that jurisdiction. It is now clear, if it was not already, that substantial contacts with a state will be required for a court to assert general jurisdiction over a defendant. The decisions' effect on products liability cases is less clear. Although it is plain that plaintiffs will need to allege more than the mere placing of a product into the stream of commerce to establish specific jurisdiction (squelching the broadest theories of jurisdiction), the fact that no single position of the Court garnered a majority and Justice Breyer's fact-based concurrence ensure that lower courts will continue to address the parameters of minimum contacts on a case-by-case basis.

This client memorandum does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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