

Jurisdiction Revisited: U.S. Supreme Court Clarifies Limits on Personal Jurisdiction

On June 27 the Supreme Court handed down decisions in *Goodyear Dunlop Tires Operations, S.A. v. Brown* and *J. McIntyre Machinery, Ltd. v. Nicastro*, the Court's first decisions in over two decades addressing the constitutional limits of a state court's exercise of "general" and "specific" jurisdiction. Both decisions will have significant implications for how corporate defendants should analyze their amenability to U.S. court jurisdiction and the jurisdictional strategies of parties involved in complex civil litigation.

Since the dawn of modern personal jurisdiction doctrine in *International Shoe* in 1945, the Supreme Court has held that jurisdiction over any person or entity must comply with "traditional notions of fair play and substantial justice" in order to satisfy the Due Process Clause of the Fourteenth Amendment. General or all-purpose jurisdiction exists over an out-of-state corporation where the company's contacts with a state are "continuous and systematic," equivalent to its physical presence in the state, as exemplified by incorporation in the state, authorization to do business in the state, or having a permanent establishment in the state. If no general jurisdiction exists over a foreign corporation, a state still may exercise "specific" jurisdiction over the foreign corporation where the underlying cause of action arises out of the defendant's activity or conduct in or directed at the state. Monday's decisions addressed the constitutional bounds of a state court's exercise of both general and specific jurisdiction.

I. General Jurisdiction: *Goodyear Dunlop Tires Operations, S.A. v. Brown*

Justice Ginsburg's unanimous opinion in *Goodyear* re-affirmed the Supreme Court's strong adherence to the *International Shoe* test – requiring a finding of "continuous and systematic" contacts for the exercise of general jurisdiction – and refused to find such contacts between foreign affiliates of a U.S. company, Goodyear, and the forum state, North Carolina, based on occasional sales in the state of the defendant's product.

Goodyear involved product liability claims by the families of two North Carolina teenagers killed in a bus crash in France, who sued a Goodyear U.S. parent entity as well as Goodyear affiliates from Luxembourg, Turkey and France in a North Carolina court. Plaintiffs sought damages based on the failure of the bus tires, which had been manufactured by the foreign affiliates. The Supreme Court found the North Carolina state court's exercise

of general jurisdiction over the foreign affiliates unconstitutional because the Goodyear affiliates had made only sporadic sales in the state unconnected to the underlying tort claim.

In the unanimous opinion, Justice Ginsburg rejected the state court’s reasoning that jurisdiction existed over the foreign affiliates because they had purposefully put their tires into “the stream of commerce” by being part of Goodyear’s “highly organized” distribution process and making no attempt to exclude their tires from distribution in North Carolina. The Supreme Court found erroneous the state court’s reliance on the “stream of commerce” theory first articulated in *Asahi Metal v. Superior Court of California*, noting that such a theory is applicable only to support a finding of specific jurisdiction, *i.e.*, when a “nonresident defendant, acting *outside* the forum, places in the stream of commerce a product that ultimately causes harm *inside* the forum.” In *Goodyear*, of course, there was no dispute that the bus crash (the harm) as well as the manufacture of the allegedly faulty tires occurred outside of North Carolina.

II. Specific Jurisdiction: *J. McIntyre Machinery, Ltd. v. Nicastro*

In *J. McIntyre Machinery, Ltd. v. Nicastro*, the plaintiff-respondent, Robert Nicastro, severely injured his hand while using a metal-shearing machine that was manufactured by J. McIntyre Machinery, Ltd. Although Nicastro injured his hand while using the machinery in New Jersey, it was manufactured in England, where J. McIntyre is incorporated. Nicastro sued the British corporation in New Jersey state court, despite the fact that J. McIntyre had no presence in New Jersey and never marketed or shipped goods to the state, but rather used an independent distribution company to sell its goods in the United States.

Revisiting questions that have long plagued the lower courts since the decision in *Asahi Metal*, the Supreme Court considered whether a manufacturer that knows its goods are sold or marketed in the United States as a whole can constitutionally be haled into the court of a specific state where its goods cause harm, even if the corporation has no other contacts with that specific state and has not directed any of its activities there.

A majority of the Court refused to adopt the expansive jurisdictional rule the New Jersey Supreme Court relied on in exercising its jurisdiction – that J. McIntyre “knew or reasonably 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.’” Writing for the plurality, Justice Kennedy¹ addressed, and rejected, the proposition raised in Justice Brennan’s concurring *Asahi* opinion that “considerations of fairness and foreseeability” alone can support an assertion of personal jurisdiction. The plurality assailed Justice Brennan’s statement that “‘jurisdiction premised on the placement of a product in the stream of commerce [without more] is consistent with the Due Process Clause,’ for ‘[a]s long as a participant in this process is aware that the final product is being marketed in the

¹ Justice Kennedy was joined by Chief Justice Roberts and Justices Scalia and Thomas.

forum State, the possibility of a lawsuit there cannot come as a surprise.” Instead of foreseeability, the plurality reasoned that the touchstone of personal jurisdiction is the defendant’s activities targeted at the forum state, by which the defendant implicitly or explicitly submits to the state’s authority.

The plurality emphasized that *Nicastro* had not established that J. McIntyre had a presence in, any contacts with, or directed any activities toward New Jersey. Neither the fact that J. McIntyre’s product made its way to New Jersey nor the fact that the independent distributor agreed to sell J. McIntyre’s products in the United States were sufficient to support New Jersey’s assertion of jurisdiction, for these were not activities that J. McIntyre specifically directed toward the state. In a concurrence, Justice Breyer, joined by Justice Alito, agreed that on the facts of the case before them, New Jersey could not constitutionally assert jurisdiction over J. McIntyre and similarly rejected the New Jersey Supreme Court’s expansive jurisdictional rule. On the other hand, the concurrence refused to adopt what it called the plurality’s “strict no-jurisdiction rule.” Noting that commerce and communications have vastly changed over the last quarter-century and may require refashioning of jurisdictional rules, the concurring Justices nevertheless agreed *J. McIntyre* was “an unsuitable vehicle” for doing so.

Nicastro thus makes it clear that the mere fact that a foreign manufacturer uses an independent distributor to sell its goods in the United States without expressly excluding a particular state from the purview of the distributor’s activities will not be sufficient to create jurisdiction over claims based on injuries caused by the manufacturer’s products in the state. It does not rule out, however, the notion that more immediately “state-directed” activities will suffice to create personal jurisdiction over claims arising from those activities, be it the sale of products or otherwise.

III. Implications of the Decisions

The Supreme Court’s decision in *Goodyear* clarifies that the “stream of commerce” analysis is simply irrelevant in the context of general jurisdiction. By focusing on the foreign affiliate’s lack of contacts with the forum state, *Goodyear* re-affirmed the notion that for purposes of general jurisdiction “continuous and systematic” contacts with a state must be just that, and that corporate relations among related affiliates will generally not suffice.

The situation on “stream of commerce” for specific jurisdiction, by contrast, remains less clear. While the Court in *J. McIntyre* declined to adopt the New Jersey Supreme Court’s rationale that a state court necessarily has jurisdiction over a defendant that knows its goods are being marketed or sold in the United States as a whole, the failure of the Court to produce a majority concerning the reach of the “stream of commerce” metaphor leaves important questions unresolved, perhaps extending the saga of the metaphor for years to come.

What is clear is that the mere use of an independent distributor to sell goods in the United States will not, without more, create personal jurisdiction over a foreign manufacturer, which is itself a significant departure from, and cutting back on, the prior approach of many state courts on this issue. *A fortiori*, *J. McIntyre* should make it far more difficult, if not impossible, to assert jurisdiction over a component part manufacturer whose product ends up in a larger product which is itself sold by somebody else in the foreign state.

Notably, both the plurality and the concurring opinions reflect the Court's continuing adherence to strict jurisdictional limits, echoing the Court's June 2010 decision in *Morrison v. National Australia Banks*, which refused the extraterritorial application of § 10(b) of the Securities Exchange Act of 1934.² While the concept that a foreign defendant that purposefully avails itself of the right to do business in a state by directing its activities there can be held subject to the state's jurisdiction on claims based on these activities remains alive and well, there can be little doubt that the Court will be taking a narrower view of what this means in particular cases from now on, and that the hand of foreign defendants in arguing jurisdictional motions in the lower courts should be strengthened accordingly.

If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed under Litigation and Arbitration under the "Practices" section of our website at <http://www.clearygottlieb.com>.

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² For a full summary of the *Morrison* opinion and its implications, see Cleary Gottlieb's Alert Memo, *U.S. Supreme Court Limits Section 10(b) of the Securities Exchange Act to Security Transactions Made on Domestic Exchanges or in the United States*, June 25, 2010.

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