



Court Clarifies Personal Jurisdiction Rules

SOME SUITS INVOLVING FOREIGN MANUFACTURERS CAN'T BE FILED IN STATE COURTS

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Unlike other areas of the law, the critical moment in products liability cases often takes place before a single document has been produced or a deposition taken. Many cases either gain traction or reach an unceremonious end during the motion to dismiss phase, when concepts such as lack of personal jurisdiction, preemption, and *forum non conveniens* are debated by both sides.

As the global marketplace continues to grow at an exponential rate, courts have been faced with resolving the tension between allowing the plaintiff to choose a forum and the due process concerns that are at stake when a defendant is sued in a jurisdiction where it has limited contacts. In 2011, the U.S. Supreme Court issued two significant decisions that attempt to provide clarity and guidance on one such personal jurisdiction issue, namely, whether a plaintiff can file suit in a state where a foreign manufacturer's products are sold and ultimately cause injury or even death to the user. (Note: As referenced in the Supreme Court's decisions and as used throughout this article, a foreign manufacturer refers to a manufacturer not located in the United States).

In each of its decisions — *J. McIntyre Machinery Ltd. v. Nicastro*, 180 L. Ed. 2d 765 (U.S. 2011) and *Goodyear Dunlop Tires Operations S.A. v. Brown*, 180 L. Ed. 2d 796 (U.S. 2011) — the Supreme Court reaffirmed

that a state court may only exercise personal jurisdiction over a foreign manufacturer if the manufacturer “purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” In doing so, the Supreme Court rejected the “stream of commerce” doctrine, which allows a plaintiff to file suit in a state if the foreign manufacturer knew or reasonably should have known that its products would ultimately be sold in a particular state.

In *McIntyre*, the plaintiff seriously injured his hand at his workplace in New Jersey while operating a machine manufactured by the defendant manufacturer. The defendant was incorporated in and had its operations in England. On the one hand, several facts weighed against the exercise of personal jurisdiction in New Jersey: (1) the defendant did not advertise in New Jersey; (2) it did not have an office there; (3) it did not pay taxes there or own property in the state; and (4) it never sent its employees to New Jersey.

On the other hand, the defendant marketed its products through a distributor located in the United States. Further, its officials attended trade shows in the United States (although never in New Jersey) and up to four of its machines ended up in New



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Jersey, including the one that was involved in the plaintiff's accident. Based on this fact pattern, the New Jersey Supreme Court held that the state had jurisdiction over the defendant manufacturer because the defendant “knew or reasonably should have known” that its products could have been distributed and sold in any of the 50 states and because it failed to take reasonable steps to prevent the distribution of its products in New Jersey.

The Supreme Court reversed the New Jersey Supreme Court decision. In a plurality opinion, Justice Anthony Kennedy emphasized that the exercise of personal jurisdiction requires some act by the defendant that is purposefully directed at the forum state and something more than placing its product in the stream of commerce to establish a substantial connection between the defendant and the forum state. Thus, while the foreign manufacturer may have targeted the United States as a whole, Justice Kennedy concluded that it did not specifically target New Jersey so as to subject itself to personal jurisdiction.

Justice Stephen Breyer and Justice Samuel Alito concurred in the plurality opin-

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ion, agreeing that the facts did not support an exercise of personal jurisdiction by the New Jersey Supreme Court over the defendant. Justice Breyer declined to join the hard-line no-jurisdiction rule established by the plurality. He emphasized that advances in technology may change the rules of personal jurisdiction and, thus, he preferred to wait for a case that presented such facts and confronted the issue of modern technology.

Justice Ruth Bader Ginsburg, joined by Justices Sonia Sotomayor and Elena Kagan dissented, concluding that the plurality opinion went against precedent, in particular the stream of commerce doctrine established in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

Foreign Subsidiaries

On the same day as it issued *McIntyre*, the Court also issued another decision that will have lasting impacts on personal jurisdiction over foreign manufacturers. In *Goodyear*, two young boys from North Carolina were killed in a bus accident that occurred in France. The boys' parents brought suit in North Carolina state court, alleging in part that the accident was caused by a defective product manufactured in Turkey by three foreign subsidiaries of Goodyear USA, which were organized and operated in Turkey, France, and Luxembourg.

The three foreign subsidiaries argued that North Carolina lacked the authority to exercise personal jurisdiction over them because (1) they manufacture tires for the

European and Asian markets; (2) they do not solicit business in North Carolina; and (3) they do not ship or sell their tires to North Carolina customers. The defendant, Goodyear USA, which had plants in North Carolina and regularly engaged in commercial activity there, did not contest the court's jurisdiction.

The Court of Appeals of North Carolina held that the state had general personal jurisdiction over the foreign manufacturers because they placed their products in the stream of commerce without limiting the possibility that their products may be sold in North Carolina.

In a unanimous decision, the Supreme Court reversed the decision of the North Carolina court, holding that the stream of commerce doctrine was an inadequate basis for the exercise of general personal jurisdiction over the foreign subsidiaries. The Supreme Court did not abandon the stream of commerce doctrine entirely, as it noted that it may be sufficient to establish specific personal jurisdiction; however, the doctrine was insufficient to demonstrate "purposeful availment" and "continuous and systematic" contacts with the forum state necessary for general personal jurisdiction.

Notably, solely on the grounds that such argument was not timely, the Supreme Court refused to address the respondents' "single enterprise" argument (that is, that the Court should merge Goodyear USA with its foreign subsidiaries, thereby extending its authority to exercise personal jurisdiction over the former to the latter).

Nationwide Distribution

Both *McIntyre* and *Goodyear* protect foreign manufacturers from products liability claims brought in state court where the foreign manufacturer does not specifically market in the forum state nor intends to invoke or benefit from the forum state's laws. As presented in *McIntyre*, at least one way to avoid exposure to U.S. products liability laws is to target the U.S. market generally, such as through a nationwide distributor network.

However, while both *McIntyre* and *Goodyear* establish limitations on a state court's authority to exercise personal jurisdiction over foreign manufacturers in lawsuits involving products liability claims, neither affords absolute protection from U.S. products liability laws. First, it is unclear whether either decision extends protection from lawsuits brought in federal court. Second, as Justice Breyer suggested in *McIntyre*, rules regarding personal jurisdiction may quickly change with the rise of globalization and Internet-based marketing.

Finally, to the extent a foreign manufacturer has a parent company located in the United States, the Supreme Court in *Goodyear* suggested that personal jurisdiction may be extended to foreign subsidiaries if the plaintiff timely argues that the parent and its subsidiaries should be regarded as a single "unitary business," thereby extending the state court's personal jurisdiction over the U.S. parent corporation to the foreign subsidiaries. Accordingly, this aspect of personal jurisdiction remains in flux and will continue to generate a great deal of litigation in products liability cases. ■